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# An Argument

ON THE

POWERS, DUTIES, AND CONDUCT,

OF THE

**HON. JOHN C. CALHOUN,**

A

Vice President of the United States,

AND

PRESIDENT OF THE SENATE.

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**BY PATRICK HENRY.**

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# THE VICE PRESIDENT.

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## LETTER I.

[From the National Journal, Monday, May 1st, 1826.]

TO THE EDITOR OF THE NATIONAL JOURNAL.

SIR,

In the National Intelligencer of the 24th inst. another effort is made, in a communication signed a "WESTERN SENATOR," to exculpate the Vice President of the United States from the charge of partiality in the exercise of his duties as President of the Senate. The testimony in favor of this officer thus given, is announced as an offering at the shrine of justice, by a witness, who is "neither the *personal* nor *particular* friend of Mr. CALHOUN." There may be reasons why the *soi disant* "Western Senator" is the "particular" without being the "personal" friend of a political aspirant; but he seems clearly to be one of those friends whom the Spanish proverb proscribes, since his defence is directly at war with a previous and solemn declaration of the Vice-President himself. The defence admits, that the Vice-President did, of his own volition, call Mr. Dickerson to order: The Vice-President, in his Address of the 15th inst., avers that his "most deliberate and anxious attention, by night and by day, on the question of the extent of his powers, under a correct construction of the 6th and 7th rules of the Senate, had settled in the conviction, that the right *to call to order*, on questions touching the *latitude or freedom* of debate, belongs exclusively "to the members of" the Senate, and not to the Chair. If Mr. Dickerson's attempt to speak, on a motion which, by the rules of the Senate, precluded debate, did not present a question "touching the *latitude or freedom of debate*," it is difficult for a case to be imagined in which such a question can arise. And so the original power of calling to order, which "deliberate and anxious attention by night and by day" had induced the Vice-President to disclaim, his champion admits him, in a conspicuous instance, to have exercised. It is observable, moreover, that the Vice-President's Address advances no reason against his original right to call to order, in "questions

"touching the latitude or freedom of debate," which is not equally applicable to every other possible question of order.

In the Chair of President of the Senate, Mr. Calhoun has, indeed, very rarely volunteered a call to order; for "questions touching the latitude or freedom of debate" have not been presented from a quarter to which inclination prompted him to direct such an exercise of his power; while, on the other hand, his disappointment found consolation, and his yet thirsty ambition encouragement, in the declamations of every enemy to the Government. When, however, in a striking and mournful instance, the national money, time, and character, had been prostituted, for hour after hour, day after day, week after week, and almost month after month, to the irrelative rhapsodies of a once powerful mind; rhapsodies which, if ever they approached the subject of discussion, did so, like the conic asymptotes, without ever touching it;—rhapsodies which were not only really, but avowedly, the offspring of systematic hostility to men, without reference to measures; rhapsodies which, though sometimes illuminated by a lingering ray of genius, were oftener in a style of gross reviling, discreditable to him who uttered, and more discreditable to him who permitted them: When a spectacle thus humiliating to the American name, had been exhibited before the American Senate, without one effort of authority, or one hint of disapprobation, from its President, the rising murmurs of public indignation reminded him that some excuse was necessary, for having sacrificed the proprieties of office to the sympathies of a desperate ambition.

After his partisans had displayed much newspaper chivalry in his behalf, his own mind "bestowed its most deliberate "and anxious attention, by night and by day,"—not on the extent of his power in preserving order; a question on which any school-boy who could read, or any man of plain common sense who could not read, might have informed him;—but on devising some mode of palliating a flagrant official non-seasance. The result of these daily and nocturnal meditations, is his Address, on the 15th inst., to the Senate;—a document which merits a high place in a museum of logical curiosities. Its cardinal proposition is, that an officer, of whose existence the power to preserve order in the body which he presides over is the vital blood, has no power to do so, which this body does not expressly, and in terms, confer. The inevitable corollary to this proposition is, that if the body omitted to confer such power, it might, so far as would depend on the presiding officer, be a scene of uncontrolled confusion and anarchy. With one of those bold and reckless bounds which formerly characterized Mr. Calhoun as a reasoner, he plunges

on the 6th and 7th rules of the Senate, as the sole foundation of his official authority. They are as follows, viz. "When a member shall be called to order, he shall sit down, until the President shall have determined whether he is in order or not; and every question of order shall be decided by the President without debate; but if there be a doubt in his mind, he may call for the sense of the Senate."

"If the member be called to order, for words spoken, the exceptional words shall be immediately taken down, in writing, that the President may be better enabled to judge of the matter."

Now, sir, every man whose faculties have not been strained in the "exercise" of party discipline, must consider these rules as providing for the case only, where one Senator thinks proper to call another to order. In such a state of things, the rules require the interrupted member "to sit down until the President shall have determined whether he is in order or not," and when the call is made for "words spoken," the words to "be taken down in writing, that the President may be better enabled to judge of the matter."

These rules are, manifestly, a shield to protect the dignity of the Senate from the indecorum of unchecked calls to order, recriminations, and discussions on the floor. They can, by no decent argument, be tortured into a doctrine denying to the presiding officer of a deliberate assembly, the power to preserve order: a power which is as much a part of his office, as the power of deciding a cause is a part of the office of a judge. Is there any intelligible principle which can subject these rules to an operation that would entitle one Senator to commit disorder until checked by another, and thus reduce the very officer who is the appointed guardian of decorum in the Hall, to the degradation of a useless automaton? The plain English of the doctrine of order, in any deliberative body, is, that a power in the presiding officer of such a body, to preserve order, is conferred by the single fact of his appointment: That the right to call to order is the necessary consequence of this power: And that unless such a body, *acting within the sphere of its competence*, expressly restricts this power and this right, no restriction on them can be supposed. The rules now under consideration, are special regulations, adapted to given cases, but leaving the general, original right of the chair to call to order, untouched, and resting, where it should rest, on common sense and on usage.

In assuming the strange postulate, that the power of the chair to call to order, on "questions touching the *latitude or freedom of debate*," is *appellate* only, Mr. Calhoun seems aware, that he invites a charge of extravagance, and attempts

to parry it by an argument, appropriate to his *ex-officio connexion* as Vice-President of the United States, with the Senate. The slightest examination of the duties incident to this connexion, will show, that the argument is, if possible, more untenable than the postulate.

The President of the Senate whom the Constitution contemplates, is the Vice-President of the United States; and it is in certain contingencies only, that the Senate can elect its presiding officer. The powers, then of the Constitutional President of the Senate, furnish the criterion of the powers of individual, who in the happening of any of these contingencies, may be its elected President. Yet Mr. Calhoun, more than scholastic absurdity, derives from the pre-existing relation of the Senate, of a President whom it may possibly elect, a criterion for determining, and a reason for pronouncing, the powers of its Constitutional President, who has nothing to do with it.

The only legatee of General Jackson's pretensions to the Vice-Presidency, is Mr. Calhoun, in his memorable Address, as the artifice, which each of them had often employed his own cause with the cause of the Vice-President said, he prided himself on his connection with the Senate: but it was impossible that he could have made that connection was created by the open Constitution. In discharging his duty in this unparsonable in him not to recollect, that it was not by the chair, not by the voice of the Senate, but by the People, and that to them, and not to this intimately responsible."

This is a sound doctrine. But it is here pressed into a service, which it must soon desert. It is a distinctively republican system, that as the People delegates no superfluous power, every power which implies a duty to be discharged. The Vice-Senate are both the creatures of the People, whose respective powers delegated to each by the People, the powers thus acquired by the Vice-President, is to preserve order over the Senate, and, by consequence, to preserve order therein. How has Mr. Calhoun discharged the duties inseparable from this power? By refusing to exercise it, without an invitation from some member of the Senate! In other words, one of the servants of the People renders that homage to another servant of the People, which he denies to the People themselves. One agent respects a co-ordinate agent, and disregards the sovereign who constituted them both. He obeys the depositary of a delegated power, and disobeys the paramount authority which is the source of that

power! And yet, "the honourable gentleman bows to the majesty of the People!"

The inconsistent and extraordinary doctrine behind which Mr. Calhoun has sought to entrench himself, is not only unfounded in its principle, and weak in its argument, but is repugnant to all accredited usage. No precedent for it was furnished by any of the former Vice-Presidents of the United States. Of these, even Aaron Burr has left, in the firm and impartial discharge of his duties as President of the Senate, an example to his successors, more worthy, though, perhaps, more difficult of imitation, than his inconstant, experimenting, and reckless ambition.

PATRICK HENRY.

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## LETTER II.

[From the National Journal, Wednesday, June 7th, 1826.]

TO THE EDITOR OF THE NATIONAL JOURNAL.

SIR,

If the public have truly conjectured the writer of "Onslow," his authority may, with a few readers, carry a weight which none can ascribe to his arguments. I certainly would not withhold the compliment of a reply from any thing which a fortnight's deliberation, perhaps "by night and by day," had determined the anxious Vice-President to publish; nor would I refuse that courtesy to Onslow, though he were "some man at arms," skilful in the tactics of retreat, who, on the eve of flying to the bosom of his constituents, discharges an arrow at his enemy.

Onslow begins his "able vindication of the freedom of debate," by stating that "the point at issue is, whether the Vice-President has a right to call a Senator to order for words spoken in debate." This is a point which he may conceive himself to be capable of discussing; but in describing it as the ground of the present controversy, he only illustrates his adroitness in using the "*suppressio veri*";—a figure of rhetoric which, however necessary in the political school that he belongs to, both moralists and lawyers have supposed to be in close alliance with the "*suggestio falsi*." The doctrine announced in the Vice-President's Address, of April 15th, to the Senate, is, that the power of the chair to call to order on "questions touching the *latitude or freedom* of debate," is appellate only; a doctrine which he at first and very slightly endeavoured to sustain by arguments suitable to any Presi-

dent, whether *ex-officio*, or elected, of the Senate, and then by arguments appropriate to an officer of the former description. Against this doctrine and its author, I contended that the President of the Senate, whether chosen by that body or by the People at large, derives from the single fact of his appointment the original right of calling to order ; that this right is more conspicuous in the case of an officer sent by the People to preside over the Senate, than in the case of a President whom the Senate might elect ; that the present Vice-President had urged no reason against his original right to call to order on “ questions touching the *latitude or freedom* of debate,” which was not equally applicable to every other possible question of order ; that his theory and his practice had not accorded with each other ; that cases had arisen in which he ought to have exercised his original right of calling to order, and omitted to exercise it ; and, finally, that his omission resulted from culpable motives. That these are the “ points at issue,” must appear to the most cursory reader of the Vice-President’s Address, and of my former letter.

In thus restoring to the controversy its proper subjects, I take no uncharitable pleasure in exposing the cunning or the clumsiness of an adversary ; still less do I feel any apprehension of “ the point at issue,” as assumed by Onslow. But I am reluctant that the public should mistake for the true question any distorted representation of it, which the exigencies of a bad cause may induce its advocate to display. In inviting printers to republish Onslow’s defence, Mr. Calhoun may expect that it will gain by diffusion, what it wants in strength ; but while the American People are governed by the rules of common sense, this writer will scarcely find any thing in their opinions so consoling as the applause of the Telegraph. If, indeed, any proposition could be submitted to the understanding which deserved its unhesitating assent, the right and the duty of an officer who presides over a deliberative assembly, to protect its proceedings from disorder, would seem to be precisely such a proposition. It is a proposition so near to an axiom, that the mind not only pronounces in its favour with instinctive alacrity, and an unfaltering voice, but feels some difficulty in distinguishing between the absurdity of him who would voluntarily undertake to demonstrate, and that of him who ventures to deny it. Nothing however seems too bold for the effrontery of Onslow, nothing too subtle for his serpentine insinuation. With the easy assurance of a man who is stating a conceded postulate, he says, “ after all, the power of the “ Vice President must depend upon the rules and usages of “ the Senate ;” a postulate not only false in its principle, but

which, if true, would not sustain the cause to whose aid it is invoked. Unless the Constitution of the United States be, as an act of Congress was, subjected to some military construction, the power of the Vice-President in presiding over the Senate rests on deeper, holier foundations, than any rules or usages which that body may adopt. What says this Constitution? "The Vice President of the United States shall be *"President of the Senate,* but shall have no vote unless they *"be equally divided."*" "The Senate shall choose their own officers, and also a President *pro tempore,* in the absence of *"the Vice President, or when he shall exercise the office of President of the United States."*" (*Const. U. S. Art. 1, Sec. 3.*) It is here made the duty of the Vice-President to *preside over* the Senate, under the sole restriction of having no vote except in a given case; the right of the Senate to choose their President, is confined to two contingencies; his powers, after being so chosen, are identical with those of the President set over them by the Constitution, and any abridgement of those powers by the Senate would be a palpable infraction of that Constitution. Now, Sir, what is the import of the term "*to preside,*" in relation to a deliberative assembly? Can any sophistry devise a plausible definition of it which would exclude the power of preserving order? In appointing an officer to preside over the Senate, the People surely intended, not to erect an empty pageant, but to accomplish some useful object: And when, in another part of the Constitution, they authorize each House "*to determine the rules of its proceedings,*" they do not authorize it to adopt rules depriving any office created by the Constitution, of powers belonging, *ex vi termini,* to that office. If the plainest, or the most profound man in the community, were asked what powers he supposed to be inherent in the presiding officer of either House of Congress, he would instantly enumerate, first, the power of preserving order in its deliberations; next, that of collecting the sense of its members on any question submitted to its decision; and thirdly, that of authenticating by his signature, its legislative acts. I have before said, and I regret that I am obliged to repeat a truism, that "*the right to call to order is a necessary consequence of the power of preserving order;*" and that "*unless a deliberative body, acting within the sphere of its competence, expressly restrict this power and this right, no restriction on them can be supposed.*" In devesting the President set over them by the People, of any power which he had received, either expressly or impliedly, from the People, the Senate, instead of "*acting within the sphere of their competence,*" would act usurpingly and unconstitutionally; they would nullify the connexion which the People had es-

tailed between themselves and their President ; they would reduce themselves to the monstrous spectacle of a body without a head, and their President to the equally monstrous spectacle of a head without a body ; and their violent act, while it would be disobeyed as illegal, would be contemned as ridiculous. But, in truth, the Senate have never thus forgotten their allegiance to the Constitution.

The power of the Vice President does not then "depend upon the rules and usages of the Senate ;" and if it did, there is nothing in these rules and usages, to justify the construction of that power, which he attempts to impose on an enlightened nation. The rules on which he professes to rely are, I have argued, "special regulations, adapted to given cases," and the municipal code of the Senate cannot be interpreted to deny to their President every power which it does not expressly confer on him. In the Preface to the "Manual of Parliamentary Practice" which Mr. Jefferson compiled for the "*use of the Senate,*" that great man says, "The Senate have accordingly formed *some* rules for its own government, but *these going only to few cases*, they have referred to the decision of their President without debate, and without appeal, all questions of order arising under their own rules, or where they have provided none. This places under the discretion of the President, *a very extensive field of decision*, and one which, irregularly exercised, would have a powerful effect on the proceedings and determinations of the House." It is observable that the rules of the Senate referred to by Mr. Jefferson, are, according to Mr. Calhoun, and his anonymous partisan, the sole foundation of the Vice-President's power in the Senate : Though Mr. Jefferson emphatically describes them as "going only to few cases ;" attributes to that officer a discretionary power, in the incalculably more numerous questions of order, for which these rules do not provide ; and in a subsequent part of the same Preface, considers the "*law of proceedings in the Senate, as composed of the precepts of the Constitution, the regulations of the Senate, and where these are silent, of the rules of Parliament.*" It would indeed be strange, if Mr. Jefferson had propounded any doctrine which refused to the Vice President a power implied in the nature of his office, and essential to the discharge of its duties. But it is, doubtless, a subject of regret to that enlightened patriot, that he has seen the "discretion" of a Vice President of the United States, so irregularly exercised as to produce "a powerful effect," of no pleasing kind, on the reputation of the Senate, and of the Republic. Now, Sir, what are the rules of Parliament on the subject of order ? In p. 55, 2d edition, of Mr. Jefferson's Manual, it is laid down as

a Parliamentary rule, that no member is “to digress from the matter to fall upon the person, *Scot.* 31. *Hale's Parl.* 133. “2. *Hats.* 166, by speaking, *reviling, nipping, or unmanerly words*, against a particular member. *Smyth's Comw.* L. 2, “c. 3. The consequences of a measure may be reprobated “in strong terms, but to arraign the motives of those who propose or advocate it, is a *personality, and against order*. *Qui digreditur a materia ad personam, Mr. Speaker ought to suppress. Ord. Com.* 1604.” In p. 59. 60, it is held that “It is a breach of order in debate to notice what has been said on the same subject in the other House, or the particular votes, or majorities on it there; because the opinion of each House should be left to its own independency, not to be influenced by the proceedings of the other; and the quoting them might beget reflections leading to a misunderstanding between the two Houses. 8 *Grey* 22. Neither House can exercise any authority over a member or officer of the other, but should complain to the House of which he is, and leave the punishment to them. Where the complaint is of words disrespectfully spoken by a member of another House, it is difficult to obtain punishment, because of the rules supposed necessary to be observed (as to the immediate noting down of words) for the security of members. Therefore it is the duty of the House, and more particularly of the Speaker, to interfere immediately, and not to permit expressions to go unnoticed, which may give a ground of complaint to the other House, and introduce proceedings and mutual accusations between the two Houses, which can hardly be terminated without difficulty and disorder. 3 *Hats.* 51.

These rules are expressly stated by Mr. Jefferson as a part of “the law of proceedings in the Senate.” Beside these, other rules of Parliament require the original interposition of the Speaker, and though not specifically cited by Mr. Jefferson, are, according to his doctrine, a part of the “law of proceedings in the Senate.” “On the 14th of April, 1604, rule conceived, ‘That, if any man speak impertinently, or beside the question in hand, its stands with the orders of the House for the Speaker to interrupt him; and to shew the pleasure of the House, whether they will further hear him.’” “On the 17th of April, 1604, agreed for a general rule, if any superfluous motion or tedious speech be offered in the House, the party is to be directed and ordered by Mr. Speaker.” “On the 19th of May, 1604, Sir William Paddy entering into a long speech, a rule agreed That, if any man speak not to the matter in question, the Speaker is to moderate. So it is said on the 2d of May, 1810, when a member made what seem-

*“ed an impertinent speech, and there was much hissing and spitting, “That it was conceived for a rule, that Mr. Speaker may stay impertinent speeches.” “On the 10th of November, 1640, it was declared, That when a business is begun, and in debate, if any man rise to speak to a new business, any Member may, but Mr. Speaker ought to, interrupt him.”*

See Hatsell's Precedents, Vol. 2d, 3d Edition.

I have here collated these particular rules, because some of them are cited by Mr. Jefferson; because all of them are, in his opinion, a part of the “law of proceedings in the Senate;” because during the last session of that body, all of them were grossly violated by a certain Senator; and because all of them distinctly attribute to the presiding officer the *original* right and duty of calling to order. Unwilling to encumber a plain question with a long retinue of authorities, I forbear to transcribe the numerous Parliamentary rules which, though not in terms requiring the Speaker to call to order, were always understood to impose on him that obligation. Mr. Onslow, who is styled by Mr. Jefferson, “the ablest among the Speakers of the House of Commons,” was, we are told, especially vigilant and strenuous in enforcing them, by exercising his original right of calling to order. But my adversary, having certainly forgotten, if indeed he ever knew, the practice of this eminent officer, probably assumed his name, “eu-*phonie gratia.*”

The foregoing illustrations show conclusively, that Mr. Jefferson's deliberate doctrines, on the subject of the Vice-President's power in the Senate, so far from supporting, directly contradict, Mr. Calhoun's theory. Not venturing to contend that Mr. Jefferson's practice was contrariant to his principles, Onslow, with characteristic disingenuousness, states, that this great man, in his valedictory address to the Senate, March 2, 1801, “expressly designates, his power over the debates of the Senate as the *umpirage* of the Vice President.” The passage containing this word is as follows, viz: “I owe it to truth and justice, at the same time to declare, that the habits of order and decorum, which so strongly characterize the proceedings of the Senate, have rendered the *umpirage* of their President an office of little difficulty, that in times and on questions which have severely tried the sensibilities of the House, calm and temperate discussion has rarely been disturbed by departure from order.” If this illustration proved any thing, it would prove too much; for if Mr. Jefferson here used the word “umpirage” in the narrow, technical sense which is supposed, he must have intended that the power of the President of the Senate, however appointed, is *in every case*, appellate only; whereas, Mr. Calhoun, after

distinguishing between the powers of an *ex officio*, and of an elected, President of that body, says, first, that the power of the former at least to call to order “*in questions touching the latitude or freedom of debate,*” is appellate only; and then, in the true Guerilla spirit, shifts his ground, and says, “the point “at issue is whether the Vice-President has the right to call to “order for *words spoken in debate.*” I know not what farther juggles he may meditate; but so far forth, he has never distinctly announced the doctrine, however it is inferible from his arguments, that *in no case* the President of the Senate possesses the original right of calling to order. And yet this preposterous position is ascribed to Mr. Jefferson, in defiance of his authoritative publication, and of his illustrious fame. If he used the word “umpirage,” to indicate an “appellate power,” he contradicted both the spirit and the letter of his “Manual.” But inconsistency is Mr. Calhoun’s *peculum*, and Mr. Jefferson is the last man who would trespass on his rights. “After all,” the cavil about the word “umpirage” is lower than a freshman’s logic. Technical words, in our language, lose, when introduced into popular speech, their primitive peculiarity of meaning, and must be interpreted in reference to the subject which they are applied to. On few words of this sort has custom superinduced more significations than on “umpirage;” as a reference to the best authors will clearly demonstrate. That Mr. Jefferson used it in its ordinary acceptation, as synonymous with the office, authority, or act of determining, and not in its native technical sense, must be evident to every reader of the “Manual” who is not ready, in subserving the plots of a faction, to accuse of gross self contradiction, a patriot and a philosopher.

So much, sir, for the authority of the sage of Monticello on the question of the Parliamentary power of the Vice President. And yet he has been cited in support of Mr. Calhoun’s doctrines! Who could be surprised then, if Mr. Jefferson, his known opinions on that subject notwithstanding, were summoned to vouch for this gentleman’s political character?

The rules of the Senate, and Mr. Jefferson’s opinions, so far from containing any thing repugnant to their President’s original, and except by the People, indefeasible right to call to order, are, I have shown, in many instances declaratory of that right. But an opposite conclusion is sought to be derived from a rule of the House of Representatives. This rule is, that “If any member, in speaking or otherwise, *transgress the rules of the House*, the Speaker shall, or any member may, “call to order;” and the inference extorted from it is, that because it expressly imposes on the Speaker of the House of Representatives, the obligation *in certain cases*, of calling to

order, the non-existence in the President of the Senate of the power to call to order, in *certain other cases*, must be implied. This, Sir, is surely the most whimsical of all logical phantasies. Because the House of Representatives have, in the plenitude of regulation, passed nearly one hundred rules for their government, descending often to the minutest details of business, and one of them is not to be found in "*some rules*" formed by the Senate, and "*going only to few cases*," the argument is, that however superfluous such a rule may be, and however incompetent the Senate may have been to form a contrary rule, they are bound to act as if they had formed that contrary rule! Instead of further noticing a deduction which certainly shows "*at least as much spirit as judgment*," I merely observe, that even this rule does not require the Speaker of the House of Representatives to call to order in any case, *except for a transgression "of the rules of the House,"* and, therefore, on Mr. Calhoun's principles, whenever that officer calls a member to order for any other cause, (as it is his daily habit to do,) he is guilty of "*usurpation*." But Onslow understands the doctrine of compensation, and having trusted to an authority which proves too much, here makes amends by quoting one which proves too little. In one material respect, indeed, it proves more than he expected, for, as the rule in question, even in connexion with the other rules of the House of Representatives, does not confer all the power on the subject of order, which the Speaker of that House confessedly possesses and enforces, he has powers not arising from regulation; a consequence closely analogous to my argument on the powers of the President of the Senate.

Distrusting their appeal to domestic or republican authority, Onslow and Mr. Calhoun next resort to the British House of Lords, and tell us of "*Mr. Randolph's assertion*," that the Lord Chancellor, who presides over that body, has never called a member to order for "*words spoken*." If the practice of this assembly is adduced, not merely to throw light on the latest phasis of Mr. Calhoun's chameleon creed, but to show that he has no original right of calling to order, I ask whether the authority was cited through confidence in it as a test. If, as it is said, the Lord Chancellor "*stands in the same irresponsible relation to the body over which he presides, that the Vice President does to the Senate*," he is irresponsible to the People also; an immunity which, however the Vice-President may desire it, he fortunately does not enjoy. It might, however, be conceded, that the Lord Chancellor, an officer of the crown, and tracing his official ancestry to times when the rights of the People were lost in the power of the Barons and the King, and executing no constitutional trust paramount to the

prerogative of the former or to the privileges of the latter, has no power to violate the dignity of the Peers, by calling one of them to order, unless thereto requested by another. Such a privilege, in a British Peer, is not more remarkable than his privilege of entering into no recognisance, except in the Courts of King's Bench and Chancery; than his exemption from attendance on certain Courts; than his privilege of being tried by Peers only; than his privilege, equivalent to the benefit of clergy; than the various other, and particularly the Parliamentary, privileges which belong to him. The peculiarities of the British Constitution may, perhaps, render it expedient, that he should, in despite of the spirit of the age, retain these privileges: But any feudal precedents which they may have engendered are surely unfit for the imitation of an American Senate, however Mr. Randolph may be excused for believing in them. While a member of the House of Representatives, he was the habitual maligner of the Senate, as the aristocratical branch of our government. Those who knew him best, even then prophesied that he would one day advocate the enlargement of its authority. As he now endeavours to assimilate it to the House of Peers, I am afraid that his visit to England has resulted in something more mischievous than his studying their pedigrees. In thus denying any efficacy to the practice of the Lords, when conflicting with that of Legislative bodies which are unaffected by the canker of aristocracy, I do not concede, Sir, that under this practice the presiding officer of that Body has no original right of calling to order. On the contrary, it appears that in a debate in the House of Lords, on the 1st of February, 1793, (see Parliamentary Register, vol. 35, p. 89,) the Lord Chancellor said, "he could not do better than recall the discussion "from the undue extent to which it had proceeded, to its own "bounds." This precedent shows that, if Mr. Calhoun respects, as he professes to do, the decisions of his "irresponsible" prototype, he ought to have called Mr. Randolph to order on almost every occasion during the last session, on which that Senator spoke. But it shows too that the practice of the House of Lords is inapplicable to the Senate. For the Lord Chancellor, after making the cited remark, proceeded to exhibit, at considerable length, his views of the question under debate; a course which would be utterly inadmissible in the President of the American Senate, however elected, and however "irresponsible."

One incident of the office of an English Lord Chancellor is, that he is the "keeper of the King's conscience." If, by analogy, the present Vice-President of the United States, is the keeper of their conscience, it might truly be said, Sir, as a

learned lawyer once argued to the Supreme Court, that "the United States have no conscience."

With a natural reluctance to understand an unpleasant subject, Onslow cites as important to the controversy, a rule in the "Manual" that "disorderly words are not to be noticed till the member has finished his speech; then the person objecting to them, and desiring them to be taken down by the Clerk at the table must repeat them." This is certainly the rule in cases where a *member* exercises his right of calling to order, but its phraseology shows its relation to him, and not to the presiding officer; it does not deny the presiding officer's right to call to order, and is obviously inapplicable to many cases of disorderly words. A rule of Parliament, of force in the Senate of the United States, provides that "*no one is to speak impertinently or\* beside the question, superfluously or tediously.*" (Manual, page 54.) It will, I presume, be admitted, that words of this description are disorderly; and yet it cannot be said, that some member must either call such a speaker to order, take down his words, and that the Clerk at the table must repeat them, or else, that the "impertinent, superfluous, tedious" or irrelative speech, is to continue *ad infinitum*. On such a supposition, bold would have been the daring of that Senator, and severe his penalty, who could venture to call to order a certain speaker during the last session, and thus oblige himself to the more than penitentiary labour of transcribing ravings, which, we have been lately told, fill nearly four hundred large and closely written MS. pages! Painful would have been the task of the innocent clerk; thankless the diligence of the printer, and deep the shame of an extensive, an enlightened, and a generous body of constituents! The mind dwells with mingled emotions on the fall of a man, whom nature designed for better things than to be the unconscious implement of a party. After exhausting a brilliant genius in the service of mortified aspirations, and malignant passions, and after profaning, with every scurrility, that the vocabulary of slander could furnish, the place which the Constitution had made the Temple of Dignity, he has left it with no consolation to himself, except the melancholy regret, "non eram qualis sum;" and has suffered the world to perceive in him, with pity and scorn, a new illustration of Johnson's remark, that Shakspeare, "wanting a buf-

\* Mr. Tazewell is said to have boasted, that the ablest speech which his colleague delivered during the last session of the Senate, was against the projected Convention in Virginia, and that it was spoken on a proposal on the subject of the salt tax! Well were it, however, if irrelativeness had been the only fault of Mr. Randolph's lawless career during that period.

"soon, went into the Senate house for that which the Senate-house would certainly have afforded him."

I am defied to produce a single instance in the "proceedings, either of the English Parliament, or of the American Congress, in which a member of either of those bodies has been pronounced out of order, even for the most direct and unqualified charge of corruption against the executive government, or any of its Departments." "Is there indeed," asks Onslow, "any American, so ignorant of the rights and privileges of a legislative branch in a free government, as to maintain that the presiding officer of either House of Congress, could rightfully call a member to order, for charging the President and Secretary of State, with having formed a corrupt coalition?" I shall not condescend to answer a defiance, which is at once, a bold evasion of the question in controversy, and an awkward artifice to represent me as an enemy to the freedom of debate. I never contended that a representative of the people acted disorderly in charging its Government with corruption: I never contended that faction might not, without being disorderly, ring the changes on her magical word "coalition," however the matter were against truth, or the manner against taste. Let such accusations be made;—let them be investigated; if they be sustained, the people will avenge themselves; and if they fail, the accuser can find safety in the legislative privilege of slander. But I have contended and demonstrated, that when a member of a deliberate body violates order, it is the duty of the presiding officer of that body to call him to order. Every man knows that speeches "impertinent beside the question, superfluous or tedious," have been pronounced, and gross *personalities*, *in the strict meaning of the word*, uttered during the last session of the Senate: Every man knows too that such occurrences were violations of order. I have moreover shown, and shall hereafter show, still more conclusively, if inductive reasoning can be confided in, that the omission, on the part of the President of the Senate, to check these violations, originated in improper motives. In the same unworthy spirit which dictated the defiance I have despised, "Onslow" has permitted his readers to infer, that I "most wantonly and gratuitously assailed the Vice-President as the instigator of the duel between Mr. Randolph and Mr. Clay." Though I never made this charge, I do not deny, that "Onslow" may be more familiar with the motives of the Vice President, than I am; and Mr. Calhoun's friends have, perhaps, the liberty of supposing those motives to be as criminal as they please. But if the charge is imputed to me, in accordance with that shallow sophistry, which augments the accusations of an opponent. in

order by confuting some of them, to render the rest invidious, I would suggest, very respectfully, to the advocates of the Vice President, whether there is not more chivalry than prudence, in accumulating suspicions on a character which already staggers under proofs.

The public will I hope, do me the justice of believing, that I cited in support of my argument, the Vice-President's own practice, not through any particular respect for his authority, but because its repugnancy to his doctrine illustrated the motives of that doctrine. If "my powers of discrimination are too feeble to perceive the difference, the manifest and striking difference," between the question arising in Mr. Dickerson's case, and "a question effecting the *latitude or freedom of debate*," I claim, (though not in the spirit of the "*malim errare cum Platone*,") the authority of the Vice-President for this stolidity. On a question which, according to his own showing, admitted of no debate, he allowed Mr. Randolph to speak at considerable length: Now, if the Vice-President did not consider this question as "affecting the latitude or freedom of debate," Mr. Randolph must have been suffered, through the Vice-President's partialities or fears, to speak where the rules of the House prohibited discussion.—And Mr. Calhoun may select between a character for "feeble powers of discrimination," and a character for official turpitude; a question which I confess myself inadequate to decide. But the distinction taken by "Onslow" is in truth a wretched quibble, and intended merely to keep out of view the bearing of Mr. Dickerson's case. This case illustrates every proposition which I have advanced, and none more strongly than the charge of "culpable motives." The minute history of it in the Alexandria Phoenix Gazette, of April 21, 1826, demonstrates from *incontestable concurrent testimony*, that on a certain question Mr. Dickerson rose to speak, and was called to order; that Mr. Randolph rose to speak, was not called to order, but delivered a speech; that Mr. D. rose again, was called to order, and sat down. It is true that Mr. Dickerson acquiesced in this flagrant injustice. For what opponent of the administration would offend Mr. Randolph? But Mr. Dickerson has since seen the necessity to his reputation of disclaiming the Vice-President as his chieftain. The case of this trimming Senator, is not, however, the only one in which Mr. Calhoun's theory is contradicted by his practice; for it is a well known anecdote of Senatorial decorum, that in the controversy between Mr. Randolph and Mr. Lloyd, the Vice President directed Mr. L. to take his seat, and on repeating the command, so far forgot his rule in his wrath, as to break a harmless seal-frame, which stood near

him. My "powers of discrimination are so exceedingly feeble" that I cannot distinguish this "spirited" proceeding from a substantial *original* call to order. I care not whether the call was made "for words spoken in debate," or on a "question affecting the *latitude or freedom* of debate," or for indecorum of any kind. Onslow may select whichever supposition is most favourable to his own argument, or to the reputation of the Vice President.

As a final, but bootless, expedient, Onslow asks, "Ought a "debate involving the conduct and motive of executive officers, to be checked by the chair, when every member of the "Senate deems it to be in order." He then says, "It is in "the power of any Senator, who thinks a debate disorderly, "to call in the jurisdiction of the chair, and place the responsibility of deciding the question of order on the Vice President; and yet, so restless and reckless is the spirit of accusation against that officer, that he is made responsible for "the denunciations uttered in the Senate against the Administration, when not a single friend of the administration, in "that body, believes them to be out of order. I presume "Patrick Henry' will not be disposed to pay so poor a compliment to the firmness of those Senators who are friendly to "the administration, as to suppose that, though they believed "a speaker to be out of order in denouncing it, they would "so far shrink from the performance of their duty, as to abstain from calling him to order." Having before exposed the subterfuge by which this writer strives to escape from the true question, under the cover of an admitted proposition, I will here merely remark, that though unable to define the motives which govern the minds of all the Senators, I can readily imagine in some, a reluctance to volunteer the exercise of an invidious right, while an officer was present, who, by performing a solemn duty, would relieve them from such a necessity. I do not either concede that in every possible question of order a call can be made from the floor. Some of the rules on this subject, mentioned in Mr. Jefferson's Manual, are obviously capable of being suitably enforced by the chair only, and that of which Mr. Randolph was an habitual transgressor, (see Jefferson's Manual, 2d ed., p. 54,) is, I think, of this description. As to the Senators friendly to the administration, whose silence is affectedly relied on, my adversary well knows that the most decorous interference on their part would have subjected them to every malignant imputation, every opprobrious epithet, and every allusion to the "gag-law," the "freedom of debate," and the other common places of his party, which its vulgar rhetoric could supply.

Whenever the name of Burr is mentioned, the friends of

the Vice-President become nervous. Unwilling farther to alarm their sensibility, I will now only remind Onslow, that although " those who usurp power, and not those who abstain " from the improper assumption of it, are the persons who " are justly obnoxious to the charge of ambition," yet an affected moderation is often the clearest *indicium* of aspiring design. Julius Cesar " thrice refused the kingly crown;" both Octavius and Tiberius assumed it with violent reluctance; and Oliver Cromwell " struggled hard with the Lord" before he could be persuaded to subvert the liberties of England. When, too, some citizens of Baltimore, " good easy souls," in their Address of February 28th, 1801, congratulated a certain individual on " that patriotism which disclaimed competition for " the Presidential chair with that other eminent character who " had been called to it;" this individual most sweetly and moderately answered, " that as to stepping between the will " and wishes of the people in opposition to that great and " good man, Mr. Jefferson, to whom a large portion of the " people of this country had fondly looked as a safe depositary " of their liberties, he should, in doing so, consider himself un- " worthy of confidence, ungrateful to his own feelings, and to " those principles by which he had always been actuated." Every man acquainted with the secret history of that memorable period, knows that the amiable correspondent of the citizens of Baltimore used all means " per fas et nefas," and invoked the powers, not of earth only, but of another place, to defeat the election of Mr. Jefferson; and can therefore justly estimate the moderation which inspired the passage I have referred to. But of all species of *moderation* in a public man, that which disclaims an authority delegated to him by the People for their own benefit, is the least entitled to applause, and the most obvious to suspicion.

It is said that " the Vice President, and not the question as " to his powers, is the real object at which PATRICK HENRY " aims." I shall not deny, Sir, that it is the duty of every good citizen, who believes a public officer to act wrongly, through bad motives, to expose such misconduct, and to exhibit him to the people, as a servant who has betrayed his trust. At the same time, I do not say, that Mr. Calhoun's shameless tolerance of the most flagrant indecencies, and his yet more shameless vindication of it, or that the selfish considerations which influenced his appointment of the standing committees of the Senate, constitute his heaviest forfeitures of public confidence. For, Sir, while every fair principle of argument and evidence forces me to despise the clamour of " coalition," which is howled against the Administration by the survivors of a prostrate faction; certain facts which I

may hereafter employ for the information of the public, extort from me the belief, that as other "coalitions" have proved abortive, the agents in them are devising new schemes for sacrificing the welfare of their country, at the shrine of their own aggrandizement.

PATRICK HENRY.

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### LETTER III.

[*From the National Journal, Friday, August 4th, 1826.*]

To the Honourable JOHN C. CALHOUN, Vice-President of the United States.

SIR,

Two letters signed "ONSLAW," which have been addressed to me through the medium of the National Intelligencer, so clearly indicate their parentage, that I should, perhaps, act disrespectfully to your official station, in considering you any longer as an anonymous opponent. Though there was a time when no man could be insensible to the honour of a correspondence with a citizen filling the second office of the Government, I will not offend your modesty by affecting any peculiar gratification to my vanity from the circumstance that you are the incumbent. The Intelligencer very properly adopts the general opinion, that in adorning its columns with speculations recommended by novelty at least, you "have "other objects in view than the decision of an abstract question "of order." But you have been betrayed into an exposure of these objects, by an impetuosity characterizing your whole political career, and auspicious to your country, because fatal to yourself.

From the commencement of the Government until the last session of Congress, order had been preserved in the Senate under every Vice-President, and decorum, almost rising to solemnity, had been a distinctive feature of its proceedings. But no sooner were you sent to preside over it, than its hall became, as if by some magic agency, transformed into an arena where political disappointment rioted in its madness, and the animosities of a spirit, at once fierce and malignant, exhibited themselves in every shape offensive to decency, and even hunted their victim in the shelter of the grave. The Patres Conscripti of the land, the Representatives of twenty-four Sovereign Republics, no longer extending their constant, parental vigilance to the concerns of the Empire, were, to the heavy loss of its treasure and its fame, degraded into being

auditors of vituperations, elaborate as they were wanton, and almost rivaling the classic pre eminence of Billingsgate. During this organized defiance of the decorum essential not only to legislative deliberation, but to social intercourse, what part of the spectacle was most conspicuously shameful? It was, that in the Constitutional Temple of Dignity, the appointed High Priest beheld its altars profaned, and its sacrifices broken, without one effort at defence, or uttering one word of reproof; but sat "an Abbot of Misrule," pleased with anarchy, or a political aspirant, too fearful in duty, and too bold in ambition, even "to hint a fault, or hesitate dislike."

The existence and the enormity of the disorders which have been alluded to, are, unhappily, too notorious to require the adduction of evidence. It is equally notorious, that they were not repressed: It must be universally conceded that they ought to have been repressed, and that on some public agent or agents, censure for the toleration of them must deservedly rest. Until common sense was first startled by your extraordinary, but very intelligible heresies, no man even affected to doubt that it was of the very essence of the duties imperious on an officer presiding over a deliberative assembly, to do what he was appointed, and what, by accepting the office, he had implicitly promised to do; or that of such duties the most signal constituent was the preservation of order.—From these principles, it followed that the mere appointment of the officer, clothed him with the right, and subjected him to the duty, of preserving order; and where the appointment proceeded from a supreme authority, the farther consequence was apparent, that no inferior authority was competent to enervate the right, or to remove the duty. When the doctrine came to be applied to the Vice-President of the United States, whom the People had appointed to *preside over the Senate*; and whom, therefore, they had empowered and directed to preserve order therein, the corollary resulted, that the People *only* could devest of any of its characteristics, the office which they had created; and that the clause of the Constitution authorizing the Senate "to determine the rules of its proceedings," could not be construed as conferring on that body any such power. The contempt for these plain propositions, which your official practice had manifested, having at length aroused general censure in no ordinary degree, you attempted, on the 15th of April, more than four months after the beginning of the Session, to defend this practice, on what you hoped would be at least plausible grounds. The incredulity of the public requiring, however, farther efforts for its removal, you oppressed the newspapers with assumptions which, after foaming awhile into every variety of logical extravagance,

subsided in the doctrine, that the rules of the Senate are the exclusive source of the Vice-President's powers in that body.

This rash defiance of the Constitution now seeks protection under the paradox, that the preservation of order forms no part of the presiding power in a deliberative assembly. After stating that "an inherent power" is one that belongs essentially to the "office, and is in its nature inseparable from it," and that by necessary inference it must belong to the presiding officer of every deliberative assembly, you argue, because one branch of the British parliament has, and the other has not, as you assert after Mr. Randolph, conferred certain powers on its presiding officer, that either fact disproves the powers to be inherent. The illustration derived from the House of Commons is singularly unhappy. Waiving for the present any reliance on the circumstance that many rules of that House, cited by Mr. Jefferson, so far from being grants of power to the Speaker, are merely declaratory of the sense which it entertained of his powers, and were probably elicited by some diversities of opinion among the members, I suggest to you the expediency of hereafter resorting to history for facts, instead of ransacking the armory of monkish logic for some rusty weapon of controversy. Had your inquiries been prosecuted more fully, or more fairly, you would have found that on the first appointment, in the year 1377, by the House of Commons, of a Speaker, his office was merely that of a messenger to the King, and that he attained, by gradual approaches only, the character of a presiding officer. "From "the primitive situation (says a learned writer) of the Com- "mons, who in all cases were instructed how to act, they had "no opportunity of debating upon any subject, but they re- "quired a person to intimate their determinations to the King, "and for this purpose they, at first, elected a Speaker. The "further the business of that House was extended, the more "they ventured to form resolutions without the advice of their "constituents. The power and privileges of their Speaker "were enlarged in proportion; and he, at length, obtained the "province of an ordinary President."—(See Millar's *Historical View of the English Government*. vol. 2, page 255, fourth edition.) For a long time, then, the Speaker of the House of Commons "had not obtained the province of an ordinary President." But when that House, emerging from its primitive feudal insignificance, acquired the character and felt the dignity of a deliberative assembly, it perceived the necessity of order to its proceedings, and annexed the power of maintaining it to an office which originally had been established for another purpose. Experience, and progressive civility, finally furnished the House of Commons with a complete im-

age of the presiding power; and disputes in regard to the nature of that power were settled by declaratory rules while other rules were adopted to remedy any deficiency in its strength. At length the Speaker "*obtained the province of an ordinary President.*" And what is that province? History and custom, though you are deaf to the harmony of their united voices, declare that it is "first, the power of preserving order in" the deliberations of the body over which he presides; "next, that of collecting the sense of its members "on any question submitted to their decision; and thirdly, "that of authenticating, by his signature, its legislative acts." To this construction, the common sense of mankind agrees. The most uneducated member of a village meeting, when asked what he expects from the individual whom he calls to the chair, will answer, substantially, in the language of these specifications. The fallacy of your argument arises from the postulate that the office can be created without the powers necessary to the performance of its duties, and, therefore, inherent in its nature: And with characteristic disingenuousness, you avail yourself of the fact that the Speaker of the House of Commons had at one time no power to preserve order, carefully suppressing another fact, that he was then not a presiding officer. But the irresistible dictate of reason is, that the creation of an office is, *ipso facto*, the creation of the powers incident to its nature, and indispensable to its operation; and that otherwise, however existing in name, the office does not exist in fact. An office, like every thing else, must have an origin; whence, you infer that it has no inherent powers, or, in other words, does not exist because it was created. Instead of contending generally, as you wantonly charge me with contending, that the individual who fills it "holds his "power independently of the will of the body over which he "presides; which can neither give nor take it away, nor "modify the mode of exercising it, nor control its operation," I never denied that all these acts were competent to the authority which conferred the appointment. The House of Commons, or the House of Representatives, each of which elects its Speaker, is, without question, physically competent to divest the office of its constituent powers; to reduce it to the same automaton that you have made yourself, and still to retain the name. But, as you correctly remark, "to divest the "office of it, (i. e. an inherent power,) would be to change its "nature. It would be no longer the same office." This would, indeed, be a triumph of force over reason. But would it prove that the office never had possessed any inherent powers? As plausibly might it be argued that because some men have been made slaves, the right of personal liberty is

not inherent in every man; or that the right to freedom of conscience, because despotism or superstition has often oppressed it, is not also inherent.

Congenial to the logical deceit which has just been exposed, is your maxim "that there are, indeed, inherent powers, but they are in the *body*, and not in the *officer*." If your principles were a proper test, I should here have only to ask, how can you suppose power to be inherent in the *body* even, of which the origin is extrinsic? The body as much derives its powers from the authority creating it, as an officer chosen by it derives his powers from the body; and can, therefore, on your hypothesis, possess no inherent powers. But being by no means partial to your peculiarities of reasoning, I shall admit that every body, aggregate or individual, or however created, possesses certain inherent powers; and that a deliberative assembly, for example, has the inherent power of creating some particular office, not previously created by paramount authority. Such an assembly, however, unless it commits the absurdity of expressly withholding from the office the powers essential to its nature, and thus changes that nature, confers on the office by the single fact of creating it, every power necessary for the performance of its duties. The very establishment of the office is the combination of the elements essential to its nature, which, therefore, are inherent in the office, and *ex vi termini* belong to it. On an opposite theory, the equality of the three angles of a triangle to two right angles, is a property inherent, not in triangles, but in the mathematician who constructs them; and air is a property inherent, not in the universe, but in the Deity exclusively, because He made the Universe.

The House of Commons having, I have said, converted their messenger into a presiding officer, at length consummated the idea of the powers essential to his new character. This idea is exposed to the criticism of the world. The world adopts it, and the acquiescence of ages confirms its authority. In this state of things, with the complete image before it, of a presiding office, armed with certain powers, and charged with certain duties, each branch of the American legislature assembles, though under widely different circumstances. The House of Representatives having the faculty of electing its presiding officer, had also the faculty of enlarging his powers, or of abridging, even to the extreme of annihilating, those powers. What was the course of that House? Satisfied with the construction which the most celebrated popular assembly of modern times had, under the advantages of long experience, placed on the presiding power, and with the ratification of that construction by the common sense of mankind; regardless of

any exception to it which, in an isolated instance, may possibly have survived the victory of knowledge over feudal barbarity; the House of Representatives, amid numerous rules formed for municipal convenience, adopted none either enforcing, or limiting, the received idea of the presiding power. The rule which it seems that, with desperate pertinacity, you still miscall an "express rule" of the House of Representatives, conferring on its Speaker the general power of calling to order, is in these words, viz : " If any member, in speaking or otherwise, *transgress the rules of the House*, the Speaker shall, or any member *may* call him to order." As this rule provides, in terms, for the cases of violations of the rules of the House, and for no other, the inference from it is not only cogent, but unavoidable, that any disorder not falling within its operation, was left to the operation of some other authority. And where is that authority? There is no rule of the House for the repression of many disorders, which the Speaker, with its entire acquiescence, and responding it to its just expectations, has always undertaken to repress. He must therefore have done so, by virtue of some power which the House conceived to be inherent in his office, and not deserving the formality of regulation. Beside these disorders which have been committed, others are possible, to which also no rule can be applied. Where is the rule against menacing gestures and against assaults? Cases which, unless the indignant voice of the People be hereafter more respected than it was during the last winter, will, in another place, probably be historical.— Can the most greedy credulity believe that it would not be within the power, and a part of the duty of the Speaker, to call to order the member guilty of such improprieties? Yet, reckless of the usages of the House of Representatives, and with the besetting feudalism of your logic, you argue, because that House has passed a rule requiring the Speaker to interpose in some given cases of irregularity, that it is an "express rule," applicable to every case.

Every State Legislature of the Union, which, or either of whose branches, convened under the circumstances that have been described, had, like the House of Representatives, the faculty of determining the powers of its presiding officer; but concurred with that House in its practical assertion that some powers were inherent in the presiding officer of a deliberative assembly, and that consequently, rules in regard to such powers were superfluous.

A body capable, as the House of Representatives is, of choosing its presiding officer, has, I have admitted, the physical power to devest his office of its characteristics, and thus change its nature. So too the people of the United States,

in declaring that the Vice-President "shall be President of the Senate," might have annexed to his office any power or disability whatever. But instead of doing so, they simply invested him with the presiding power, and must therefore be supposed to have understood that power in the sense which custom had affixed to it. As custom had long before declared that the right and duty of preserving order was an inherent part of the presiding power, the People in sending the Vice-President to preside over the Senate, required him to preserve order in its proceedings. The Senate assembled then, not like the other House with full power over its municipal arrangements, but under the authority of an instrument which *uno flagi* empowered it to assemble, and the Vice-President to act as its presiding officer. It was then incompetent, even physically, to deprive this functionary of any of the capacities essential to his office, or more briefly, to change the nature of that office. Assuming it as a reasonable postulate, that the People, in appointing a President of the Senate, intended him to perform some duty, I inquire what that duty is. It is prescribed no where in the Constitution, and any of which this instrument may be understood to authorize his performance will, when specified, be found to comprise the preservation of order. If the People of the United States did not affix to the presiding power the meaning which mankind had placed on it, did they design to erect an empty pageant, or an automaton, which has recently been far less respectable in its operations than that of Mr. Maelzel? This is a conjecture so disparaging to their understanding, that after the boasts of veneration for them, which you have made with a repetition at once irksome and suspicious, you can scarcely allow it to be probable. Did the People then, on the only hypothesis which remains to you, create an office, and leave it to the Senate to assign the duties of that office? If so, the People merely determined on the name, and the Senate were to determine on the substance: The baptism preceded the birth. On this supposition, nothing can prevent the Senate, if so inclining, from requiring its clerk, instead of the Vice-President, to collect its sense on any question; from declaring that the Vice President's signature is unnecessary to the authentication of its acts; or from imposing on him the duties of the clerk. You are doubtless, prepared to charge these illustrations with being extravagant and absurd; and considering they are the offspring of your own doctrine, there is some reason for suspecting them of a filial resemblance. If, indeed, the Constitution had been silent, and the Senate had convened with an unrestricted right of municipal legislation, it might have chosen a presiding officer, and then ruled these, and any other similar

absurdities; because, however such absurdities might nullify his office, they would have proceeded from an authority which was under no physical disability to violate, *ad libitum*, reason and usage. But as the People had established an office of ascertained powers and duties, the Senate would have transcended the sphere of its Constitutional competency in devesting that office of any of these characteristics.

It is said, however, that the very Constitution which authorizes the Vice President to *preside over the Senate*, also authorizes the Senate to "determine the rules of its proceedings, to punish its members for disorderly conduct, and with the concurrence of two thirds, to expel a member." On this provision, an argument is built, to which you ascribe "irresistible force," and which, in compliment to your admiration of it, I shall insert :

"The Constitution has vested the Senate with the right of determining the rules of its proceedings, and of punishing members for disorderly conduct, which may extend even to expulsion. The great object of giving the power to establish rules, is to preserve order. The only effectual means of preserving order is to prescribe by rules, what shall be a violation of order, and to enforce the same by adequate punishment. The Senate alone has these powers by the Constitution; consequently, the Senate alone has the right of enforcing order; and, consequently, whatever right the Vice President possesses over order, must be derived from the Senate; and, therefore, he can exercise no power in adopting rules or enforcing them, but what has been delegated to him by the Senate, and only to the extent, both in manner and matter, to which the power has been delegated. The particular power in question not having been delegated, cannot be exercised by the Vice President, and, consequently, he is not responsible."

If an unlimited latitude of assumption, and manufactured facts, were lawful implements of controversy, any thing might be proved, and even you might be successfully defended. Aware that your vindication required a license of this sort, you have, with the Constitution staring you in the face, assumed that the clause from which these deductions are derived, is the only part of it referring to the Vice President's province in the Senate. The Constitution does indeed "authorize the Senate to determine the rules of its proceedings," but it also authorizes the Vice President to *preside over*, and, consequently, as has been shown, *to preserve order* in that body. You are said to have been educated a lawyer. Have you forgotten that elementary rule of construction, adopted, "ut res magis valeat quam pereat," and requiring that any written instrument must, if possible, be so interpreted as that effect may be given to each of its parts? Or do you consider any clause of the Constitution, which would operate in restraint of your designs, as a repugnant proviso, and therefore void? Instead of so construing the clause delegating to the Vice President the presiding power, and the clause investing the Senate with the rule-

making power, as that each should retain its energy, you are driven to the pitiable exigency of asserting that the activity of the one is the paralysis of the other. If there were any force in this chief d'œuvre of reasoning, it might be as properly contended, that the clause giving the presiding power nullifies the clause giving the rule making power, as that the latter nullifies the former. But, rejecting the "irresistible" argument, I merely remark, that the presiding power granted in one part of the Constitution is obviously and entirely competitive with the rule-making power granted in another. There may, I admit, be cases in which the line of demarcation between them is not very clear; but attributes may be affirmed of each, sufficient to individuate it. For example, under the rule-making power delegated to the Senate, that body is, undoubtedly, competent to fix the hours and days of its meeting; the periods for taking up business; the number of readings which a bill shall undergo: To declare how often a member may speak: To regulate the engrossment and printing of bills: And to do various other municipal acts, of which the enumeration is unnecessary. It is equally manifest that under the presiding power, delegated to the Vice President, he has authority to take the chair when the Senate meets: To collect its sense: And to preserve order. Here, then, is the simple explanation of the two clauses: An explanation written on the forehead of the Constitution: An explanation that gives to those clauses complete efficacy, and to the Constitution a symmetrical movement: An explanation which is inevitable, unless the venerable framers of this instrument be convicted of a self contradiction, gross as that which you imputed to the illustrious, and now lamented author of the Declaration of Independence.

However familiar with sophistry, and requiring its aid, you do not, I think, improve in the management of its weapons. Or, perhaps, the fever of resentment inflames you to rave in dogmas which are hostile not to truth only, but to plausibility. Did honest ignorance, or delirious anger, precipitate you on the declaration, that "the right of *calling* to order, *in the strict literal meaning.*" (I give you the full benefit of your *itolicks.*) "so far from being derived from the right of preserving order," "is not even connected with it?" That the means by which an end is to be accomplished, are "not even connected with" that end, is a doctrine which, however it may be exemplified by a comparison of the attempt to vindicate yourself with the measures you adopt for that object, surely deserves, as an abstract proposition, the praise of a discovery, though it will never need the protection of a patent right. I leave you to the uninterrupted enjoyment of it, and when modeled into perfection, it may probably be laid on the same shelf where

rests the metaphysical demonstration that there is no connexion between cause and effect. This intrepid absurdity is followed by a sophism which endeavors to hide its weakness in a fortress of italicks. "The right of preserving order," you say, "depends on the right of enforcing it, or the right of punishment for breaches of order, always possessed by the body, but never, either by delegation or otherwise, by the Chair." Unfortunately for its purpose, this position, if true, would, with the fatal liberality of many of your arguments, prove too much; for in given cases, the right would be indeed a naked right, as the Senate might need the co-operation of the House of Representatives, and both finally the aid of the President of the United States, in directing the force of the nation. No Speaker, nor other presiding officer of a deliberative body, has physically the power of enforcing order. In the instance of the Senate, that depends on other officers of the House in regard to exterior, and on the Senate itself in regard to interior, affairs. But the enforcement of order may be exerted, successively by the President, or the other officers of the Senate, by the Senate itself, and where the source of disorder should be beyond the competency of the officers of the Senate to repress, as (for example, a military corps.) by the Executive Government. The true theory is, that all the functionaries should in their respective order, discharge their respective duties. Let the President of the Senate exert his right of preserving order, and if he exert it ineffectually, he stands acquitted of all blame, which will rest finally on the agents who may deserve it. In your instance its direction has never wavered.

In averring that the Senate only could enable the Vice President to preserve order, you hoped, no doubt, to win its favour by exaggerating its power; not perceiving that in thus repelling public censure from yourself, you necessarily transferred it to the Senate, by making that body responsible for the scenes of the last Session. But it is the misfortune of your arguments, as well as of your ambition, that in attempting extrication from one difficulty you invariably stumble on a greater. Perhaps, however, as you profess almost religious reverence for the Senate, you expected to propitiate it to your wishes, by means of a libel on its conduct; like that savage nation which whips the images of its Gods, till they grant its prayers.

PATRICK HENRY.

## LETTER IV.

*[From the National Journal, Saturday, August 5th, 1826.]*

To the Honourable JOHN C. CALHOUN, Vice President of the United States.

SIR,

Your historical researches have, it seems, informed you, that "there was a time when minions of power thought it "monstrous, that all of the powers of rulers should be derived from so low and filthy a source as the People whom they governed." Is it sympathy in this opinion that so displeases you with the proposition which I have demonstrated, that the power and duty of preserving order, and repressing irregularity, are constitutionally attached to the office of President of the Senate by the *People* who created that office? Whatever cause excited your displeasure, was sufficient to betray you into the indiscretion of ascribing the origin of this proposition to "feelings leaning strongly on the side of power;" an allegation made in the teeth of a principle, deriving the authority of the Vice President directly from the People, and announced as the very "nucleus" of my argument. My cardinal objection to your conduct during the last session of Congress, was, that it involved a refusal, on your part, to carry into effect the will of the People, by executing a trust which they had confided to you; and instead of attributing to the Vice President "high and uncontrollable power," I expressly characterized it as a delegated, and consequently, a responsible power. Indeed, unless I had done so, my argument would have been nearly as preposterous as your own. On the other hand, you attempted to trace its birth to the Senate, and claimed for that body the right of setting itself above the People, by adopting rules which might change the nature of an office created by the People. Yet your sympathies "are on the democratic side of our institutions!" They are then most singularly manifested, by subjecting an act of the People themselves to the control of the aristocratical branch of the Government. If the Senate can assume this control in one instance, why may it not do so in another, and thus paralyse, whenever occasion offers, other provisions of the Constitution? And here, Sir, permit me to borrow a passage from your letters which, while it exemplifies the vigour of your style, is pertinent to my purpose, and to say that "power so despotic and dangerous," as that claimed for the Senate, "so inconsistent with the first principles of liberty, and every sound view of the Constitution, was never attempted to be established on arguments so imbecile and absurd; to which

"no intellect, however badly organized, could yield assent, "unless associated with feelings leaning strongly to the side of "power." All my sympathies being, on the contrary, "on "the democratic side of our institutions," I must with the permission of yourself and "your associates,"—"under leave of Brutus and the rest,"—still confide in the doctrine which I have endeavoured to place beyond the reach of sophistry and declamation, that the power of the Vice President to preserve order in the Senate, is delegated by the Constitution; or, to borrow again a flower from your elegant rhetoric, is "derived "from so low and filthy a source as the People."

The suicidal attempt to transfer from yourself to me the character of being a partisan of power, was preceded by an expression of pretended surprise on your part, that after asserting the presiding power in the Senate to "rest on deeper "holier foundations, than any rules or usages which that body "may adopt," I should investigate those rules and usages. A view less partial than you took of the letter of Onslow, published in May, would have shown you that this inquiry resulted, not from any distrust of my original position, but from your scorn of the Constitution, and reference to the Senate as the sole fountain of the powers of its presiding officer. It then became proper for me to demonstrate, that even were this reference conceded to be correct, it would not sustain your positions, because the Senate had framed no rule nor usage justifying the construction which you placed on the office of its President. On this subject, to adopt your brilliant antithesis, "the rules are mute, and the Journals of the "Senate silent." And well may they be so; for a regulation devesting the Vice-President of his presiding character, would be against reason and the Constitution. The 6th and 7th rules, which have been so often quoted as the basis of your argument, are palpably designed for cases which they specify, (calls to order from the floor,) and do not impair the right of the chair to call to order; nor can any other rule of the Senate be tortured into such an operation. The mere silence of the Senate concerning this right, strongly indicates the acquiescence of that body in the construction of it, which had so long been sanctioned by custom; but the question is placed beyond controversy by "the law of proceedings in the Senate." What are the constituents of this law? Mr. Jefferson tells us that they are "the precepts of the Constitution, the "regulations of the Senate, and where these are silent, the "rules of Parliament." But, substantially denying this last position of Mr. Jefferson, and opposing your own authority to his, you ask, "how came they (i. e. the rules of Parliament) to be the rules of the Senate?" Mr. Jefferson has an-

swered this interrogatory. He tells us that "the extensive field of decision," placed under the discretion of the President of the Senate, in consequence of the rules of that body "going only to few cases," impressed on his mind "the necessity of recurring, for its government, to some known system of rules;" that he recurred to the rules of the English Parliament; and that "the acquiescence of the Senate, hitherto, under the references to them, had given them the sanction of their approbation." The appearance of Mr. Jefferson's book certainly did not induce the Senate to repent of this acquiescence, but, on the contrary, the Manual fulfilled the promise of its title page, and became "A Manual of Parliamentary Practice, for the use of the Senate of the United States." After the incorporation of the rules of Parliament into "the law of proceedings in the Senate, the President's previously 'extensive field of decision' became narrowed." I did not, as you perversely insinuate, refer to "this extensive field of decision," "to show that where the Senate has adopted no rules of its own, the rules of Parliament are those of the Senate;" but to show that rules of Parliament had been adopted, contracting that field; and also because Mr. Jefferson, in suggesting that the President's discretion, whether in doing wrong, or in doing nothing, should be limited by "some known system of rules," seems to have foreseen a recent example. The discrepancy between some rules of the Senate, and some of the Parliamentary rules cited by Mr. Jefferson, proves nothing in your favor; because he expressly disclaims for such Parliamentary rules, any authority over the Senate, and introduces them, obviously as historical illustrations. But those rules of Parliament that embrace cases "on which the precepts of the Constitution" and "the regulations of the Senate," "are silent," form, he says, a part of "the law of proceedings in the Senate." Such are precisely the rules, as I heretofore demonstrated, which, though the object indeed required no rule, imposed on you the duty of suppressing Mr. Randolph's irregularities.

The usage of the Senate is accordant to the doctrine which, both on general principles and on the ground of regulation, I have defended. Facts to prove the usage cannot, of course, be expected in much detail, from so curt a chronicle as the Journals of the Senate, and therefore you refer to them. Yet, in a volume which happens to be near me, I find "that a motion for the previous question was made; and upon a declaration from the Vice-President, that the previous question is not in order, upon an amendment to the bill, a motion was made, that the question on the final passage of the bill be postponed until Monday next; and it passed in the negative."

(See Journal of the Senate for February 5, 1800.) Here was an exercise of the presiding power, in its ordinary sense; a substantial call to order. If you contend that it was not an application of the presiding power to "the latitude or freedom of debate," or "to words spoken in debate," and the distinction should, for argument's sake, be admitted, it would not avail you. For, on a doctrine deriving the powers of the President of the Senate from its rules only, since no rule authorizes you to exert the original power of staying a motion for the previous question, you would act as usurpingly in thus exerting that power, as in calling a member to order in the cases just specified. An unanswerable objection to your apology is, that on its principles, the President of the Senate has, in no case, other than an appellate power of suppressing irregularity of any kind. Indeed, if your theory be true, that officer would, if the Senate were to forbear making rules directing his conduct, be an absolute nullity.

But contemporary publications, more minute than the Journals of the Senate, are not deficient in evidence that the original right of its presiding officer to call to order, on "questions touching the latitude or freedom of debate," or for "words spoken in debate," the cases on which your shifting creed was successively suspended, has been exerted and recognised. In a letter from Mr. HEBB, published in the National Journal of July 26, 1826, that experienced gentleman says :

"I have just laid my hands on the debates in the Senate, in the year 1803, "on the resolutions offered by Mr. Ross of Pennsylvania, authorizing the President to take possession of New Orleans, or some place adjacent; and I observed that Mr. Dayton remarked, 'If I act disorderly, the President has a right to call me to order: he must decide whether I am in order or not.' Mr. Tracy also remarked, 'According to parliamentary proceedings, no one can take possession of the floor to the interruption of another: if disorderly, the President will call him to order; but if called by a member, the President must decide; and, if in order, he must possess the floor.' Mr. Nicholas, of Virginia, rose and said, he wished to make one or two observations in reply to Mr. Ross. The Vice President interrupted him and said, 'If those observations were intended to apply to the question whether the resolutions should be the order for Monday, they would be proper: otherwise, they would not be in order.' Mr. Nicholas proceeded, when the Vice President again interrupted him, and informed him that, 'no remark in reply to the gentleman from Pennsylvania upon that question could be admitted.' 'The power of the chair, as here laid down, was not controverted, and the Senate then was composed of as able and distinguished members, (during the discussion of these resolutions,) as at any previous or subsequent period. I will only enumerate such men as De Witt Clinton, James Ross, Stephen T. Mason, Governor Morris, W. C. Nicholas, and Mr. Brackenridge.'

Against the evidence, which you must have known to exist, of the sanction given by the Senate to its President's original right of calling to order, you asserted that Mr. Jefferson himself had described that right as appellate only. Your adher-

ence to the violent assumption that Mr. Jefferson used the word "umpirage" in a technical sense, indicating an appellate power, is, perhaps, the most signal instance of polemical obstinacy that exists. The assumption not only supposes, as I fully showed, that Mr. Jefferson, by a single word, contradicted the whole Parliamentary system which he had framed, but it also supposes him to have been unacquainted with the technical meaning of that word. Precision and elegance characterize the style of that extraordinary man; and he can scarcely be suspected, in using a term of art, of a technical impropriety. Now, in technical phrase, the word which he would have employed to convey the idea imputed to him, is "arbitration;" it being only in the event of an abortive attempt at arbitration, that the office of an umpire arises. Not agreeing with you that Mr. Jefferson would grossly contradict himself, or that he was ignorant of the force of terms, I argued that he used the word "umpirage" in its popular sense—an argument entirely competitive with his reputation for consistency and literary eminence. But, as you aver, in this sense "there is not 'one instance of its being used by any respectable authority.'" Instead of accumulating quotations, as the most superficial examination of the English classics would enable me to do, I select, from an authority, "respectable" in all eyes, save those of a single individual, two passages. Of these, while both are examples of the popular sense of the word "umpire," the first may encourage you to reform the conduct which the second so vividly portrays.

Mine ear shall not be slow, mine eye not shut,  
And I will place within them as a guide  
My *umpire CONSCIENCE*, whom if they will hear,  
Light after light, well used, they shall attain,  
And to the end persisting, safe arrive.

[*Paradise Lost, Book 3, v. 193.*

— To whom these most adhere,  
He rules a moment: *CHAOS* *umpire* sits;  
And by division more embroils the fray,  
By which he reigns.

[*Ibid. Book 2, v. 908.*

If, as some nations have held, a poet is also a prophet, who would not believe that Milton wrote the last lines just after he had penetrated, through the shadows of nearly two centuries, into the American Senate house, while Mr. Randolph was practising "*the freedom of debate,*" and you were "*presiding?*"

Not only has the Senate acknowledged the rights which have been proved to appertain to its President, but it has recognised his peculiar Constitutional character. When that

body acts as in committee of the whole, or *quasi committee*, as Mr. Jefferson denominates it, the Vice-President never leaves the chair, as in a similar case, the Speaker of the House of Representatives does. The reason of the difference is, that the Senate cannot, under any notion of "determining the "rules of its proceedings," suspend the powers of the President ordained to it by the Constitution. On the same principle, appeals from his decisions, on points of order, are not allowed. Such appeals are familiar to every deliberative assembly which is, itself, the fountain of authority to its presiding officer. These conspicuous instances establish that the Senate considers the Vice President's rights in that body to be Constitutional rights, which it cannot impair; though it may, under the delegated rule-making power, adopt any regulations consistent with the integrity of those rights. The second example emphatically declares that the Vice-President's right on the subject of order is, in the opinion of the Senate, an inherent part of the presiding power vested in him by the People.

The Constitution, the expression of the will of the People, is indeed, the foundation on which rest the authority of the Vice President, and that of every other functionary appointed by the People. Though I investigated "the rules and usages "of the Senate," and such parliamentary rules as formed a part of "the law of proceedings in the Senate," the inquiry was prompted by no reliance on them as a criterion for deciding this controversy, but by a determination to confute you on your own principles. And perhaps to argue against such principles, is even "more ridiculous" than to advance them. The allegation, that I sought in the House of Commons for the Vice-President's power of preserving order, is about as singular as your previous charge, that I "abandoned the rules "and usages of the Senate," as the source of that power. Now I never did ascribe any such efficacy to these "rules and "usages;" and how a position can be said to be "abandoned" which was never occupied, I am at a loss to conceive. Such a position would be as remarkable as the fortifications mentioned in an official report of the Secretary of War, made in 1817. This instructive document informs Congress, "that "the military establishment, as it now stands, is sufficiently "extensive to keep the fortifications in a state of preservation, "but is wholly inadequate to defend them against a regular attack by a force of sufficient strength and skill."

Axious to retort the charges of trick and "subterfuge," which you had deservedly incurred, you accuse me of imitating, in a particular instance, these distinctive qualities of your reasoning. If such had been my weapons, I should have sup-

pressed, in the passage cited from the Debates of the Lords, the part which you consider so hostile to my argument. But I quoted the whole, in order that the public might place on it the proper interpretation, denying at the same time, for reasons then stated, that all the usages of the House of Lords, were fit subjects of introduction into the American Senate. I persevere in this doctrine; in a refusal to admit that their usages are as you describe them; and in the opinion that the cited act of the Lord Chancellor, as reported, may be fairly considered an interposition on his part, against irrelative discussion. The circumstance of its occurring as introductory to a speech which, as a member of the House he had the right to pronounce, proves nothing more against this construction, than would be proved, if the interposition had been after the speech, or unconnectively with any speech.

Aware of your obnoxiousness to such charges, you eagerly disclaimed any " wish to misstate my arguments in the slightest degree," and promised that, " to avoid the possibility of misrepresentation," I should speak for myself. But the promise was scarcely made, before it was broken. In quoting several passages from my second letter, you suppress, in one of them, the clause referring to the opinion, entertained by an individual who lately aspired to administer the Constitution and laws of the United States, that a domestic conspiracy is properly cognizable under a law punishing spies and aliens. Supposing the suppression to have been made through courtesy to General Jackson, I excuse it. As the adopted heir of his political estate, you owe him some duty; and it being beyond your power to render him any substantial service, you ought certainly to be attentive to at least the ceremonies of gratitude. The facts *lately* developed, concerning his conduct to Kentucky, to say nothing of former claims on the chivalry of his friends, invoke all their zeal to his defence: And by undertaking it, you may perhaps persuade the public, though nothing can persuade yourself, that your loyalty to him is disinterested.

With a tenacity, almost indicating prophetic apprehension, you cling to the delusion that you are irresponsible; and because you fancy that the Lord Chancellor of England is also irresponsible, insist that the practice which you ascribe to the House of Lords, is preferable to that of the House of Commons, or of the deliberative assemblies of our own country. Declining to repeat the argument against the imputed practice of the Lords, derived from their own high privileges, and the official character of their presiding officer, I ask, have you forgotten that, by Art. 2. Sec. 4, of the Constitution, the Vice-President may be removed from office on impeachment for,

and conviction of, "high crimes and *misdemeanours*?" Or that by Art. 1, Sec. 1 of the same instrument, the Senate is clothed with the "sole power" to try such impeachment? As the Senate would have cognizance of a high misdemeanour committed by the Vice President, in his capacity of its presiding officer, he cannot be said to be "irresponsible" to the Senate even. In truth, you have, in your emulation of the Lord Chancellor, exaggerated his immunities. He is responsible, both as Lord Chancellor, and as a member of the House of Lords; for his appointment to office, elevates him to the rank and privileges, if they had not descended to him from his ancestors, of a British Peer.

To complete the picture of your conduct, I cited the case of Mr. Dickerson, which proved your practice to be as inconsistent as your doctrine had been shown to be unsound. In answer, you say that I have referred "to stale and false accounts;" "it is sufficient that Mr. D. has repelled the charge of injustice," and that I "exhibit but a sorry and factious appearance in defending a Senator from oppression, who is not conscious of any injustice having been inflicted." How far the accounts are "stale and false," will, if the Editor of the Journal comply with my request, appear in connexion with this letter, from a statement originally published in a print of the District; a statement to which I expressly referred, and which has never been refuted. It will be found to reduce you to the dilemma of surrendering some, at least, of either your moral or intellectual pretensions. As to Mr. Dickerson's declarations they are immaterial to the question. He and Mr. Randolph, each committed an irregularity, though in unequal degrees. Expecting pardon from Mr. D.'s sympathy in your hostility to the Administration, you repressed him; but suffered Mr. R. to proceed, at considerable length, because, as a libeller of the President and the Secretary of State, he was endeared to you; and lest obeying no fixed rules of conduct, he might, if irritated by control, make some parts of your own history the subject of a Philippick. You were ready to "give a cake to Cerberus." The offering was, however, fruitless; for the insinuation that he was your partisan, roused Mr. Randolph to a disclaimer. Even the smooth Mr. Dickerson became impatient under this reproach; and though acquitting you of injustice to himself, (which, indeed, was not committed except in your contrasted treatment of Mr. Randolph,) he denied, in a few days afterward, that "he belongs to your school." But while exculpating you for calling him to order, he says nothing of the true subject of censure, your toleration of Mr. Randolph's greater irregularity. On this point he is both "mute and silent;" for though, from common

prudence, unwilling to fight under a shattered banner against the Administration, he sympathized with you as a Guerrilla chief engaged, like himself, in that warfare. It is strange that you should suspect me of "defending a Senator from "oppression," when I am merely using his case, to add, in your own, the proof of inconsistency to that of official misconduct.

Among the most material propositions established by the foregoing arguments, are the following, viz : 1st. That the power and duty of preserving order are constitutionally attached to the office of President of the Senate, by the People who created that office. 2nd. That the Senate, whatever else it may do under the clause of the Constitution, authorizing it "to determine the rules of its proceedings," cannot vest its presiding officer of this power, nor exempt him from this duty. 3rd. That the Senate has never attempted to do so, but, on the contrary, has borne testimony to the Constitutional character of that officer.

A doctrine which characterizes the Vice-President as the creature of the People, and of course responsible to them for his conduct, and which denies to the Senate, another creature of the People, the power of aristocratically encroaching on their rights, is described by you as "dangerous to liberty;" as being "in conflict with the just principles of our government;" as vesting "in the Vice President alone, an independent and absolute power, that would draw into the vortex of his authority an unlimited control over the freedom of debate." From this flagrant perversion of the doctrine, you deduce some portentous results. "Mark," you say, "the consequences! If the Vice-President should belong to the same party or interest which brought the President into power, or if he be dependent on him for his political standing or advancement, you will virtually place the control over the freedom of debate in the hands of the Executive."

" You thus introduce the President, as it were into the Chamber of the Senate, and place him virtually over the deliberations of the body, with powers to restrain discussion, and shielding his conduct from investigation. Let us, for instance, suppose that the present Chief Magistrate should be re-elected, and that the party which supports him should succeed, as in all probability they would in that event, in electing also their Vice-President, can it be doubted that the rules for the restraint of the freedom of debate in the Senate, which have been insisted on openly by the party, during the last winter, would be reduced to practice through a subservient Vice-President? And what are those rules? One of the leading ones, to advert to no other, is, that the conduct of the Exe-

"cutive, as a co-ordinate branch of that Government, cannot be called in question by a Senator in debate, at least, so far as it relates to impeachable offences; and, of course, an attempt to discuss the conduct of the President in such cases, would be disorderly, and render the Senator liable to be punished, even to expulsion. What would be the consequence? The Senate would speedily sink into a body to register the decrees of the President, and sing Hosannas in his praise, and be as degraded as the Roman Senate under Nero."

It is, I admit, highly probable that you will not be re-elected, but I cannot apprehend from that event, any of the disasters which your mournful muse has predicted. So long as the Vice-President contents himself with discharging the duties of his station, the "freedom of debate" is in no danger; the power of preserving order, giving the officer invested with it no control over the "freedom of debate," but being, on the contrary, one of its strongest shields. Unrepressed disorders do, indeed, endanger the "freedom of debate," since their tendency is so to disgust the Senate, that it may eventually seek a remedy, by clothing its President with unlimited powers. Even nations have preferred despotism to anarchy. But it is at once the necessity and the settled purpose of your argument, to confound the repression of disorder with a control over the "freedom of debate?" And your last letter begins with a triumphant annunciation of success in disproving "the idea of an inherent right in the Vice-President, independent of, and beyond the will of the Senate, to control the freedom of debate;" a proposition which I never asserted, and which has about as much relation to the question in controversy, as colors have to sound. The proposed rules which you have endeavored to stigmatize, are, as to many of them, beneficial in their tendency, and were introduced not by "the party which supports the present Chief Magistrate," but by a member of the Opposition, whom you had permitted Mr. Randolph to revile. Instead of being insisted on "openly by the party," they were not, as I remember, discussed, except by Mr. Randolph himself; and the sixth in the series, which you describe as so awful, is a mere suggestion, "to inquire whether it is proper that a member should charge any officer of the Government with an impeachable offence."

The comparison of Mr. Adams to Nero is, at least, ingenious; and considering your unconcealed hostility to him, is not surprising. But after all your protestations of reverence for the Senate, how came you to prophesy that, in addition to the humiliations of last winter, it would descend to singing, as a means of legislation?

Let us now turn from the picture sketched by your imagina-

tion to one of which history is the painter. Should an individual, after soliciting the highest office in the gift of the People, retreat from the vain enterprise, and seek the next in dignity ; should he after obtaining the latter, egotistically tell the People that he had declined the pursuit of the former, through zeal for their interests ; should he consider the elevation he has gained only as a ladder to higher " political standing and " advancement ;" should he, in promoting that advancement, strive to render odious an Administration, of which the popularity would destroy his hopes, and be sedulous in conciliating its opponents ; should he so neglect the duties of his office as to permit disorders which it bound him to repress, because those disorders, though of the grossest nature, were connected with virulent personalities against the President and the Secretary of State, and proceeded from an orator of the Opposition whom he feared to offend ; should he misuse the opportunities of that office by organizing some arrangements in the Senate, so as to annoy the Administration in preparing its measures for legislative discussion ; should he after the Senate shall have sat longer than four months come out, under the impulsion of public censure, with a Jesuistical apology, affecting the courage of innocence, and the earnestness of conviction : Should such a state of things exist, its consequences might be the triumph of anarchy over the most solemn of all deliberative assemblies, and the degradation of the American character ; consequences attended by a solitary consolation, arising from the fate which his offences would ensure to their author.

You admit that many unpleasant circumstances arose from the desertion of constitutional and parliamentary duty, last winter, which you call your " independence of the will of the " Executive," and say that " most exaggerated and false ac- " counts" were " every where propagated, by hirelings of " power, of the slightest occurrence in the Senate." Doubtless, some circumstances were exaggerated ; for Fame is apt to exert her " inherent" property in this respect. But do you insinuate that some of the scenes most disgraceful to the Senate did not exist, substantially, as they were described in the newspapers of the day ? Another " officer of the Senate" has been more cautious ; for, in animadverting on the rumours of Mr. Randolph's potations, his denial goes only to number, quantity, and variety, and not to the fact that this Senator, while speaking, used the Senate-house as a tavern bar. " Thou- " sands of instances might," you say, " be cited" from the House of Representatives, the House of Commons, and I sup- pose (for the passage is somewhat obscure) you mean from the House of Lords also, " instances in which *all that has been said or uttered by Mr. Randolph is nothing*, but in which the

" Speaker waited for the interference of some of the members, "in order to preserve order." Although you shrink habitually from the "onus probandi," yet, this proposition being affirmative, you cannot refuse the challenge which I now make to you, of finding in the parliamentary history, either of England or of the United States, cases resembling Mr. Randolph's irregularities, during the last session of the Senate, in which the presiding officer did not interpose.

You say that you "deserve praise;" that you have "acted "in the spirit that ought to actuate every virtuous public "functionary;" and that "you will receive the thanks of the "country when the excitement of the day has passed away." All this is very consoling. But, Sir, you have not reflected that the period of your reward will never arrive; for what you call "the excitement of the day," is the deliberate, though indignant sentence which public opinion has pronounced on an officer who forgot his sense of duty, and the character of his country, in a dream of hopeless ambition.

PATRICK HENRY.

NOTE TO LETTER IV.

*From the National Journal, Saturday, August 5, 1826.*

The following is the statement referred to in the preceding column, by Patrick Henry; and is republished in compliance with his request.

[*From the Phenix Gazette, of Alexandria, D. C. April 21, 1826.*]

The New York Gazette of Monday last says that—"The Telegraph of Washington, on the authority of Mr. Dickerson, of the Senate, contradicts the statement from the Alexandria Gazette that the President of that body (Mr. Calhoun) had prevented him from speaking on a question before the Senate, "and permitted Mr. Randolph to speak twice."

There are two essential errors in the foregoing paragraph—one, of vital importance to the public—the other, material only to ourselves.

A bare disclaimer will correct the last. We never said that Mr. Randolph was permitted to speak *twice*. The substance of our language was that Mr. Dickerson was *twice* prevented from speaking, while Mr. Randolph was allowed to occupy the floor for more than half an hour on the identical proposition. This we stand to—nay, we can prove it, by all the Senate, and by all the Reporters that were present.

The error which we conceive to be important to the public, is simply this—The Gazette has, unfortunately, accredited a shallow *subterfuge* of the Telegraph as a contradiction of our statement. Now let the statement speak for itself; and let the *subterfuge* be contrasted with it.

[*From the Phenix Gazette, of March 31, 1826.*]

" The Resolutions proposing an amendment to the Constitution as it respects "the number of terms for which any person may be elected President of the "United States, having been read the third time, on the question that it pass, "Mr. Randolph opposed it on the ground that he was opposed to all amendments "of the Constitution; and concluded by moving to *lay it on the table*.

" Mr. Dickerson rose to make some remarks on the subject, but he was called "to order by the Vice President, a motion to *lay on the table* precluding debate.

" The motion being *still* pending, and *still* precluding debate, Mr. Randolph "rose, and addressed the Senate for more than half an hour, on the resolution,

" and when he had finished, Mr. Dickerson again rose, to make some observations, " and was again reminded by the Vice-President, that it was not in order to " speak, while such a motion was pending. Mr. Dickerson accordingly took his " seat, and the resolution was postponed till to-morrow."

[*From the United States' Telegraph, April 13, 1826.*]

" A report has been going the rounds in some newspapers, founded upon a statement in the Phenix Gazette, and a misapprehension of the proceedings in the Senate, in which Mr. Calhoun is charged with having allowed Mr. Randolph to speak to a motion, and refused Mr. Dickerson, of New-Jersey, the right to reply. We have the authority of the latter gentleman to correct this statement. So far from feeling himself aggrieved by the conduct of the Vice-President, on the occasion referred to, he thinks it was correct, delicate and respectful."

The " statement in the Phenix Gazette" is no more than a simple relation of facts; and we beg that these facts may be well understood. Mr. Randolph moved to lay the resolution on the table. Mr. Dickerson being opposed to that course, rose to object to it, and while proceeding with his objections, the Vice-President interrupted him, and declared that a motion "to lay on the table" precluded debate. Mr. Dickerson sat down—Mr. Randolph then rose, and after assigning a reason for moving to lay the resolution on the table, (but without withdrawing that motion,) spoke to the merits of the resolution for more than half an hour; concluding with the declaration, that if the question was pressed, (that is, if the Senate refused to lay the resolution on the table,) he would vote against it. Mr. Dickerson again rose, and attempted to speak, but was again interrupted by the Vice-President, and reminded, that, pending the motion to lay the resolution on the table, no debate was admissible. Mr. Dickerson then requested Mr. Randolph to vary his motion so as to postpone the resolution, instead of laying it on the table. Mr. Randolph did vary his motion, and the resolution was accordingly postponed. Can facts be more clearly stated?

But mark the language of the Telegraph—" Mr. Calhoun is charged with having allowed Mr. Randolph to speak to a motion, and refused Mr. Dickerson the right to reply"—yes, the right. Now, we have brought no such charge against Mr. Calhoun. We were fully aware that Mr. Dickerson had no "RIGHT" either "to reply," or to speak upon the motion in the first instance; because, that motion was—to lay a resolution on the table. The Vice-President therefore was entirely correct, as regards *Mr. Dickerson*. But how stands the matter as regards *Mr. Randolph*? There lies the rub. If Mr. Dickerson was out of order, (and he certainly was,) Mr. Randolph was out of order; for when Mr. Randolph spoke, the same barrier existed, that stood in the way of Mr. Dickerson, both in the first and in the last instance. Will that be denied? Can it be denied? No—We date the minions of Mr. Calhoun to hazard a refutation of that special *thorny* fact. *That fact* we make the *fuderum* of our lever; and could Archimedes have found one-half so solid, he would have dragged worlds from their orbits with as much ease as we have discomfited the Senate faction.

But the Telegraph says, that it has the authority of Mr. Dickerson to contradict our statement: and, alluding to that gentleman, adds—" So far from feeling himself aggrieved by the conduct of the Vice-President, on the occasion referred to, he thinks that it was correct, DELICATE and respectful." Does this declaration "contradict" our statement?—far from it. We have already admitted that Mr. Dickerson was not individually "aggrieved;" and we have admitted, too, that, in the case of *Mr. Dickerson*, the conduct of the Vice-President was "correct." We do not even deny that it was "respectful," for we know that Mr. Calhoun possesses the *suariter in modo* to an unrivalled extent; and believing him to be "correct" in calling Mr. Dickerson to order, we never could doubt that he did it respectfully.

But independent of his conduct being "correct" and "respectful"—it seems that it was "DELICATE." Why *delicate*? How came delicacy involved in the matter? Had his whole conduct been *correct* and *respectful*, there could have been neither delicacy nor indelicacy. We do not reject the position, however;

The truth is, that the word was veraciously, though unhappily applied—there was a delicacy and a very embarrassing one, in permitting Mr. Randolph to speak after Mr. Dickerson had been set down; and yet a more embarrassing one, in denying Mr. Dickerson the floor after it had been tamely and “delicately” allowed to Mr. Randolph.

Mr. Dickerson's declaration, then, and our “statement,” so far from being contrariant, run directly all-fours. Such, however, was not the *ostensible design*, either of the cringing Senator or the mercenary Editor. Doubtful of the effect of a downright falsehood, they trusted to a sophistical denial, which they foolishly thought would answer the same purpose, while it promised the further advantage of securing a retreat, should their kennel be invaded. Bribery and corruption can do much—but unless truth has wholly lost her influence, we will baffle their schemes, or perish in their mire.

By a recurrence to the extract which we have made from our original statement, it will be perceived that it bears date the 31st of March.—The “*Contradiction*” did not make its appearance until the thirteenth of the present month—Fourteen days of confusion and irresolution elapsed before the *modus operandi* was agreed upon. In the mean time the Vice-President writhed—Mr. Randolph abused us—their retainers in the other House stared at us as we passed them, and railed at us in their speeches—their *shake-bag*, from St. Louis, was commissioned to feel the pulses of the reporters who had sustained our statement—and the Secretary of State was gravely accused, by the factious of both Houses, of having actually bought us into his service! But notwithstanding all this, the Telegraph maintained its silence for *fourteen days*. Then came the miserable attempt at refutation, which we have just exposed.

There is one other circumstance, which it is proper that we should notice. The Telegraph commences its “*contradiction*” in these words: “A report has ‘been going the rounds in some newspapers, founded upon a statement in the ‘Phoenix Gazette, and a misapprehension of the proceedings in the Senate.’” It is true that many papers copied the statement from ours; but others copied similar ones from the Intelligencer and from the Journal; yet we hear no complaint against them. And why? Because this being a comparatively obscure print, it was deemed an easy matter to prejudice the public mind against its integrity; and because to name the Intelligencer and the Journal in connexion with the affair, would be directing the people to an irresistible corroboration of our entire statement. Let us see, then, what these papers say on the subject.

[From the *National Intelligencer*, March 31st 1826.]

#### A MENDMENT OF THE CONSTITUTION.

The engrossed joint resolution proposing to amend the Constitution of the United States so as to render any person ineligible for the Presidency after a second term, was read the third time, and the question stated on its passage.

Mr. RANDOLPH said he hoped he should not be called on to vote on the resolution now, for if so, he should be obliged to vote against it. He was opposed to all amendments of the Constitution, of every sort and kind, and he hoped he should not be called on now, to vote on this. He would vote to restore the Constitution to what it was, because, in stopping up one hole we made two. He should therefore move to lay the resolution on the table, at least till tomorrow.

Mr. DICKERSON objected to laying the resolution on the table, unless the gentleman from Virginia wanted time to examine into its merits—and was about to add some remarks when he was reminded by the Chair, that the motion now pending, to lay the resolution on the table, did not admit of debate, and Mr. D. took his seat.

Mr. RANDOLPH then rose and said: I will tell the gentleman at once—it is unreasonable, after having spoken an hour and thirty-five minutes, to speak again to-day—I will tell him at once in my plain, old fashioned, outright, downright, and I hope upright manner, that I am against all amendments to the Constitution. I believe the Constitution better now, than it would be with this amendment.

[*Then follows the rest of Mr. Randolph's speech.*]

Mr. DICKERSON again rose, but, it not being in order to debate the question, he requested Mr. R. to vary his motion to a postponement until to-morrow; which Mr. R. assented to; and the resolution was accordingly postponed until to-morrow.

[*From the National Journal, March 31st, 1826.*]

#### AMENDMENT OF THE CONSTITUTION.

The resolution proposing an amendment to the Constitution as it respects the periods to which any person may be elected President of the United States, having been read the third time—

Mr. RANDOLPH spoke against it, on the ground that he was opposed to all amendments of the Constitution, and concluded by moving to lay the resolution on the table.

Mr. DICKERSON rose to make some observations, but was reminded by the Vice-President, that on this motion there could be no debate.

Mr. RANDOLPH then addressed the Senate for about half an hour, after which, Mr. DICKERSON, again rising, was again reminded that it was not in order to discuss it.

The resolution was then laid on the table till to-morrow. The Senate then adjourned.

Thus, it appears, that on the very morning following the disgraceful transaction in the Senate, the National Intelligencer, the National Journal, and this Gazette, all made statements of the transaction—and in every essential particular, these statements are found to agree—Can it be denied that this is good evidence—And what is opposed to it? Nothing—absolutely, nothing.



#### LETTER V.

[*From the National Journal, Tuesday, August 8th, 1826.*]

To the Honourable JOHN C. CALHOUN, Vice President of the United States.

SIR,

There is a bathos in argument as well as in Rhetoric. After an elaborate apology for your official misconduct, partly derived from two isolated rules of the Senate, and Mr. Randolph's assertion concerning the House of Lords, and partly dug from the rubbish of school metaphysics, you suddenly descend to another topic of vindication, which may well surprise the most accomplished proficient in the Art of Sinking. The lofty common places of "freedom of debate," "the rights of the Senate," *et id genus omne*, are deserted; the "virtue and patriotism," the "moderation," the "courtesy, promptness and intelligence" of the Vice-President, his "indefatigable discharge of his duty," and his self-denying maxims, carried so far that he is almost, he fears, too amiable; are all forgotten, and the public are told, in substance, that Mr. Randolph's irregularities ought not to have been repressed because he had

from prescription the right of violating order, and of trampling, a chartered Thersites, on decency. "And who," you ask, "is Mr. Randolph? Is he, or his manners, a stranger in "our national councils? For more than a quarter of a century "he has been a member of Congress, and during the whole "time, his character has remained unchanged. Highly tal- "lented, eloquent, severe, and eccentric; always wandering "from the question, but often uttering wisdom worthy of a "Bacon, and wit that would not discredit a Sheridan, every "Speaker had freely indulged him in his peculiar manner, "and that without responsibility or censure, and none more "freely than the present Secretary of State, while he pre- "sided in the House of Representatives. He is elected, with "a knowledge of all this, by the ancient and renowned Com- "monwealth of Virginia, and takes his seat in the Senate. "An immediate out-cry is made against the Vice-President "for permitting him, who had been so long permitted, by so "many Speakers, in his usual freedom of discussion; though "in no respects were his attacks on the Administration freer "than what they had been on those of Mr. Jefferson, Mr. "Madison, and Mr. Monroe."

After your learned treatises in favour of anarchy, this appeal seems as clumsy, as its reasons are futile, and its assumption of facts is gratuitous. What is said of Mr. Randolph's mental character, of the length of his political life, and of his partly representing, at present, the sovereignty of the illustrious State of Virginia, is true: But it is not true that his "*peculiar manner*" had ever been carried in the House of Representatives to the extent which it reached in the Senate, nor that "in no respect were his attacks on the Administration freer "than what they had been on those of Mr. Jefferson, Mr. "Madison, and Mr. Monroe." And here, it may be again remarked, that it is not true either, that I ever contended you ought to have checked Mr. Randolph when he made "free "attacks" on the Administration, though you and your subalterns industriously strive so to misrepresent me to the public. So far from being guilty of this political absurdity, as it must appear to all, whose sympathies are not on the aristocratic "side of our institutions," I expressly asserted the right of every member of either House, to assail any Administration. Such a right is, indeed, essential to popular liberty, for it is essential to that freedom of debate, which a desperate cause has obliged you to confound with the disorder of debate. But is it a part of the freedom of debate, that a Senator should speak for months without ever, scarcely, touching the subject before the Senate? That he should indulge in gross personalities not only against individuals, who were not in Congress,

but against members of the other House, and of the Senate itself? That he should waste the time and money of the nation in the recital of his adventures, and in the effusion of his resentments? That in his reckless misanthropy he should libel both the living and the dead, and waken, on the cheek of innocence and loveliness, the blush of offended modesty? That he should complete this anticlimax of Senatorial dignity by coarse physical excesses, ostentatiously practised in the very forum whither he was deputed to perform the most solemn duties known to the Constitution? Had these, and other outrages, fresh in the memory of many, any connexion with the "freedom of debate?" If you really perceive such a connexion, there is good reason for your fear of not being re-elected: for, in addition to the present doubts of your security, your discernment would then become a subject of grave, perhaps ominous inquiry, with the People.

Trust not too fondly to what you consider the acquiescence of the Senate, in your toleration of these licentious transgressions against its own dignity, and against the public weal. It is well understood by the People that a majority of that body, remembering the past days of its fame, and feeling its present degradation, were willing, both "*in sorrow and in anger,*" that you should be tried at once by that tribunal which is supreme on earth—public opinion. *And by it you have been judged.* There may, indeed, have been some Senators, who like yourself, were not displeased with any indecorum, provided it was connected with abuse of the Administration. If so, they certainly deserve to divide with you the honour of having in a single Session changed the character of a deliberative assembly, that for thirty-seven years, most of which were co-existent with high political excitement, had maintained a proverbial reputation for dignified impartiality in its presiding officers, and more than Roman gravity among its members. Now, indeed, is a sad reverse. Like the once powerful word of Cæsar, the glory of the Senate now lies low, and there is "*none so poor to do it reverence.*"

You act wisely in sheltering yourself, whenever practicable, under the authority of the last Speaker of the House of Representatives. But unhappily for both your argument and your facts, Mr. Clay however indulgent to Mr. Randolph's "peculiar manner," never suffered him to commit disorder with impunity. Indeed neither Mr. Randolph nor any other member of the House of Representatives, ever attempted, while that officer presided over it, any such irregularities as you have approved; for, as it was known that the Speaker never forgot, in the hope of higher honours, the obligation of existing duties, his own dignity was a full security for the dignity of the House.

Though the appeal to precedents and the rest of your apology have been received by the public with dismaying incredulity, that apology seems to have entirely satisfied yourself. Incited by the vanity which prompted your ludicrous annunciation of a victory over common sense and the Constitution, you applaud some of your official acts, unconnected with the subject of order, which a discreet partisan would have shrunk from the Quixotism of attempting even to palliate. Among the most conspicuous of these, was your "appointment of "the Standing Committees," under the influence, I alleged, of "selfish considerations." You affect to consider this charge as referring to only one of those committees, but have unfortunately designated the committee on Foreign Relations, of which the composition is peculiarly indefensible. The selection of Messrs. Macon, Tazewell, Gaillard, White and Mills, as the constituents of that committee, was defended by your friends on the grounds, that at the next preceding session of the Senate, the committee on Foreign Relations were Messrs. Barbour, Jackson, Macon, Seymour, and Elliot; that Governor Barbour having been subsequently called to the Department of War, and General Jackson having (*as usual*) resigned, Mr. Macon, the next in order, was, "according to usage seldom "departed from," made chairman of the new committee; that for General Jackson, his successor in representing Tennessee, Judge White, was substituted, and Mr. Tazewell for his late colleague, Gov. Barbour; That "Mr. Gaillard, who "had not been on any committee last year, was appointed in "place of Mr. Elliot resigned, and Mr. Mills in place of Mr. Seymour, who was *arranged* on two other committees." This defence was impugned, because, in regard to Mr. Macon, the asserted usage did not exist, the real usage extending no farther than that the committee, when the place of its chairman became vacant, considered as Chairman the second originally named on it: Because the reason adduced for Mr. Tazewell's location on the committee, ought, if valid, to have made him its chairman, Governor Barbour, his colleague, having been chairman the year before: And because the exclusive geographical and succession principles, on which this vindication rested, were not only intrinsically erroneous, but had not been consistently pursued. (See *National Intelligencer*, December 30, 1825, January 2, 4, 6, 1826.) This was, undoubtedly, a successful answer to your advocates, and manifested the futility of any attempt to explain away the speaking fact, that on a highly important standing Committee, five Senators (the number of Senators on every such Committee) were placed, of whom two had voted against Mr. Clay's nomination to be Secretary of State; a third was the successor and parti-

son of General Jackson ; and all, except one, were ascertained opponents of the Administration. The Committee was, therefore, selected on principles adverse to the long established Parliamentary usage according to which, although abilities and experience form the first rule for constituting a Committee, another rule of equal validity is, that a majority on the committee should be friendly to the measures expected to engage its deliberations. The reason of this rule is, that the Administration being required to devise plans for the public welfare, is entitled to every advantage arising from preliminary discussion and illustration, before they are acted on by the Legislature. On different principles, its policy would never be fairly understood by the People, for a hostile Committee might, so far as would depend on it, strangle in their infancy the wisest and most patriotic suggestions. The British Parliament has, therefore, adopted the usage of placing on Committees, men, not only of the most illustrious reputations, but representing, as to a majority, at least, of those selected for each Committee, the views and policy of the Government. If this usage is sound and reasonable in Parliament, where the Ministers of the Crown have seats, and consequently an opportunity to illustrate and defend the measures which they introduce, it merits yet stricter observance in Congress, where no such privileges are extended to the Executive and his Cabinet. Until your factious innovations, it had been uniformly respected, both in the Senate and the House of Representatives, and by no presiding officer of either House more than by Mr. Clay. It is well known that this gentleman, while Speaker of the House of Representatives, dissented from the policy in regard to some questions of internal improvement, and the recognition of South American Independence, which, at one period, marked the administration of President Monroe ; subjects on which the opinions of the latter underwent, before his retirement from office, a change as honourable to his own candour, as it was to Mr. Clay's early and sagacious perception of the true policy of the country on those important questions. While the Speaker of the House of Representatives was thus in a *quasi* opposition to the Administration, he, nevertheless, appointed the Committees of that body in exact accordance with the rule which you have so conspicuously violated. They consisted of men of talents and experience, selected with a proper, and therefore not exclusive, regard to sectional considerations, and with such a reference to political opinions, as gave a numerical preponderance to the friends of measures, the submission of which to the Legislature was expected. At a later period, while you were, nominally at least, a candidate for the Presidency.

the Speaker, though your competitor, instead of using for your annoyance, the opportunities afforded by his station, showed his respect for reason and custom, by taking the majority on every Military Committee from among the advocates of the policy approved by the War Department, and often from the circle of your personal friends. At the last session of his Presidency over the House, he appointed as Chairman of the Committee on Military Affairs, Mr. Hamilton, of South-Carolina, who, until your amusing retreat before General Jackson, and coalition with his party, had been your adherent, and still remained your intimate.

At length, sir, the time arrived when you had occasion to determine whether this example merited imitation. And though no man could attribute to you the magnanimity which inspired it, every man hoped that a respect, however cold, for public opinion, would persuade you to repel political machination from any communion with the high office you had gained. With an alacrity, for which you claimed credit, but which is now easily accounted for, you met the Senate on the first day of its Session; knowing that, in consequence of Vice-President Tompkins' irregular attendance, the duties of the chair had devolved on a President pro tempore, whom the Senate had clothed with certain powers, especially the power of appointing Standing Committees, which would probably be withdrawn. Preventing by the promptitude of your arrival, arrangements which would have been made more agreeably to the Senate during your absence, you took the President's chair, and in discharging its duties were, according to your own account, "indefatigable, prompt, and intelligent." That you had been "indefatigable" in endeavours to discover the political opinions and passions of each individual in the body over which you came to preside, all "acknowledge;" and if, in any material instance, you remained ignorant, you were less successful than many whose pursuit of information had been less diligent. At the meeting of the Nineteenth Congress, it was palpable to the most cursory observer, that much of the talent of the Senate, and more of its passions, would be arrayed against the existing Administration: That for the first time in this country, the experiment would be tried of an opposition to men, without regard to measures: That some ground would be imminently chosen, on which exacerbated feelings, and baffled political speculations were to encamp: That some organizing principle would be applied to the Chaos of heterogeneous factions, and conflicting interests: And, in consequence of the peculiar condition of the world, especially the yet unfixed relations between Europe and South America, and the effect of their adjustment on the United States, that

some important suggestions of foreign policy must proceed from the Executive ; which, *whatever might be their character*, would be selected as a rallying point for the predetermined opposition. Such expectations were universal, and so unreservedly expressed, that it required no wizard's wand to designate the position which almost every Senator would assume.

In this crisis of novelty and anxiety, what would have been the conduct of a friend of his country who had been elevated to the second dignity in the gift of the People ? If he had opposed those pretensions to the Presidency which finally prevailed, he would, nevertheless, have said, with the man whom you so rancorously persecuted, " let the Administration be " judged by its measures," and have involved in no unnecessary preliminary embarrassment, measures submitted by the President for legislative examination. Such would have been a patriotic's course ; but it was not yours. The Vice-President of the United States, sent by the People to preside over the Senate, took the chair of office, after the Senate had, under temporary circumstances, added to its Constitutional character the power of appointing the Standing Committees. If the selection of the Committee on Foreign Relations, on the principle of enabling the Administration to develop, fully and fairly, its foreign policy, seemed to your perverse understanding, a leaning " on " the side of power," you ought at least to have avoided the odium which you incurred by seeking this Committee, almost exclusively, in the ranks of Opposition. Yet, entirely aware that the sentiments of one only of the five Senators whom you preferred, were favourable to the Administration whose measures would form the subject of their Report ; that two had opposed the nomination, to the principal seat in the cabinet, of a citizen whose fitness for it was unquestionable, and not questioned by themselves even, and had thus indicated that settled hostility to men, which would make highly improbable a candid treatment of their measures ; aware that two others represented States which had preferred, and were alleged to prefer still, a rejected candidate for the Presidency, whose disappointment, and that of his partisans, were severe and vindictive ; aware that of these Senators, one was supposed to sympathize warmly in this sentiment, and the other not to dissent from it : Estimating all these particulars, you notwithstanding organized a Committee which, from its very elements, would, you well knew, fasten on the slightest pretext of thwarting the attempt of the Administration to mature its measures for the consideration of the Senate. And what now is *Onslow's* apology ? Why, "that the venerable and patriotic Macon, " was placed at the head of the Committee," who has since

been chosen "President pro tem." of the Senate. Surely, Sir, common respect for the feelings of this patriarchal Senator, ought to have deterred you from the insinuation, which even he must suspect of bitter irony, that he was qualified, by either abilities or knowledge, for the chair in which you placed him. Entertaining for him the veneration that age, integrity, and long continued endeavours to serve the public, always procure, even when united with a narrowness of mind which education cannot enlarge, and covered by an incrustation of prejudices which experience cannot remove, I will not agree that you should elude reproach, by exposing him to ridicule. In appointing the Committee on Foreign Relations, you perfectly knew that Mr. Macon's labours in it would seldom exceed an acclamatory concurrence in such proceedings as animosity to the Administration might stimulate it to adopt. Who penned the Report on the Panama Mission? Was it the "venerable and patriotic" chairman? No! it was a member of the Committee, whose hatred of the President and the Secretary of State had been avowed; whose abilities were, indeed, of a high order, but for nothing more remarkable than for the faculty of obscuring the distinction between truth and error; whose moral sense was so perverted as to estimate discussions on the weightiest national concerns, only as combats of intellectual agility; and who was therefore earnest in proportion as he was wrong. To a man of these prejudices and habitudes, was committed the trust of reporting on an important recommendation, issuing from an Executive who had come into office under circumstances entitling him to candid, if not liberal, treatment, from his adversaries. What was the result? A measure, of which I shall now say only that it was emphatically popular, was subjected to the operations of a practised sophist, who delighted as much in torturing truth as an angler in empaling a worm, and then offered to the Senate under all the odium with which a one-sided and ingenious analysis could oppress it. This result, you must, unless wilfully blind, have foreseen; and, therefore, in so organizing the Committee as to produce it, you intended, on every rule of induction with which I am acquainted, to trammel unfairly the Administration, and by rendering it, if possible, unpopular *in limine*, to promote the selfish designs which I have ascribed to you.

But, Sir, the Committee on Foreign Relations is not the only one, though it has been convenient for you so to represent the accusation, in appointing which, I charged you with impropriety. To say nothing of your omitting Mr. Lloyd, of Massachusetts, from the Naval Committee, of which he had, to the complete satisfaction of the public, been previously

Chairman; and of the substitution for him of Mr. Hayne, of South Carolina, a zealous partisan of the Opposition;—You placed on the Committee of Finance, Messrs. Smith, Berrien, Holmes, Hayne, (again,) and Woodbury, of whom four were also of that political description: On the Committee on Indian Affairs, to which the delicate subject of the Georgia treaty would of course be referred, Messrs. Benton, White, King, Edwards, and Cobb; of whom Mr. Edwards only was friendly to the Administration; the remaining four were its decided adversaries, and of these one was the Chairman, who had solemnly exchanged his hatred of General Jackson, for a hatred of the Administration equally deadly, but less venial, because it sprung, not from a generous resentment, but from the calculating spirit of party. The Judiciary Committee was composed of Messrs. Van Buren, Holmes, Rowan, Berrien (again) and Mills, and contained only one Senator, a gentleman, I admit with pleasure, of eminent abilities, who was not decided in Opposition. The Chairman might, you knew, be safely relied on, when a recommendation of the Executive was intangible by argument, to assail it with all the subtlety and science of an educated political juggler.

It thus appears that on each of four highly important standing committees, namely, those on *Foreign Relations, Finance, Indian Affairs, and the Judiciary*, you placed only a single Senator who was not hostile to the Administration. Could this have been chance, or were "all the talents," experience and virtue of the Senate in the ranks of the amalgamation party? The latter supposition is not more obviously against fact, than the former is against probability. If any man then can sincerely believe that with a previous knowledge of the opinions and feelings of the Senators, you placed these committees in the hands of the Opposition, and yet deserve the eulogy which you have pronounced on yourself, such a man is one who, in the language of the historian, "must be considered as beyond "the reach of argument or reason, and be left to his prejudices."

I believe, Sir, you will now incline to retract your assertion, that I deal in "a profusion of vague charges," "without a single specification." If, however, your appetite for specifications is still unsatisfied, I will, whenever it may be agreeable to you, proceed to analyze some other of the thirteen Standing Committees of the Senate, appointed at its last session.

The frequency with which you have, directly or indirectly, introduced into this controversy, the present Secretary of State, induces me to remind you of a passage of his life, which occurred while he presided over the House of Representatives,

and has, perhaps, faded from your memory. It is a well known anecdote of the Metropolis, that when the quarrel between Mr. Gro-venor and yourself, in the House of Representatives, had nearly resulted in a duel, the arrangements for it were communicated to the Speaker in his retirement, by a learned gentleman, indifferent to both parties, who desired his official interference. Refusing for obvious reasons, this species of interposition. Mr. Clay, however, volunteered his friendly efforts at a pacification, and succeeded just in time to avert extremities. This benevolent agency detained him from the Speaker's chair for an hour or two after the House had assembled; an absence from duty, which is conspicuous in his official life. Under circumstances not entirely dissimilar, how, Sir, did you act? A Senator, in his place, while addressing you as the President of the Senate, attacked, with libellous and brutal personality, the private character of Mr. Clay. But considering falsehood and calumny, when directed against those to whom you had made yourself a political enemy, as being incident to the "freedom of debate," you permitted them, without rebuke, to be uttered, and Mr. Clay, finding his honour unsafe in the Senate, resorted to the field to protect it. Now, Sir, though I never "most wantonly and gratuitously assailed the Vice President, as the instigator of "the duel between Mr. Randolph and Mr. Clay," I certainly have always thought, in common with every man, that this event would never have occurred, if the Vice-President had discharged his duty of calling Mr. Randolph to order, when he transgressed it. No one who knew you, was indeed wild enough to expect that Mr. Clay's former friendliness would have animated your sense of official obligation with any of the emotions, which spring up spontaneously in a generous bosom: But you might, consistently with even your character, have borne to countenance your Swiss underlings in their silly falsehood, that Mr. Clay challenged Mr. Randolph, because the latter had assailed his *political* conduct.

Though your letters have afforded me but little instruction, a passage in one of them amused me so agreeably, that I must thank you for the sensation. Your second "able vindication of the freedom of debate," has left me, you say, "without the possibility of escape." If you really fancy, Sir, that such a measure was at any time within my contemplation, you must think that never were means so unpropitious to an escape, as those which I adopted. I followed you into the labyrinths of sophistry, and into the concealments of ambition, with a zeal which would certainly have been greater, if I had considered your abilities to be as formidable as your principles.

PATRICK HENRY.











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